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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, May 17, 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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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No. 04–102–1]

Rules of Practice for Certain Adjudicatory Proceedings Under the Animal Welfare Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: We are amending the administrative regulations of the Office of the Secretary of Agriculture to provide that the rules of practice contained in those regulations shall be applicable to all adjudicatory proceedings under the license denial and termination provisions of the Animal Welfare Act (AWA) regulations. The AWA regulations provide that a person whose license application has been denied or whose license has been terminated may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied or the license should not be terminated. This final rule is necessary to clarify the rules of practice that will apply to such hearings.

EFFECTIVE DATE: May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service. The regulations established under the AWA are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Part 2 (referred to below as the regulations) generally provides administrative requirements and sets forth institutional responsibilities of regulated persons under the AWA. These administrative requirements and institutional responsibilities include the requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping. The provisions pertaining to licensing are contained in "Subpart A—Licensing," §§ 2.1 through 2.12.

Under the regulations in § 2.1(a)(1), any person operating or intending to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under § 2.1(a)(3) of the regulations, must have a valid license. The regulations in § 2.11(a) provide that a license will not be issued to any applicant who:

- Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6;
- Is not in compliance with any of the regulations or standards in 9 CFR chapter I, subchapter A;
- Has had a license revoked or whose license is suspended, as set forth in § 2.10;
- Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;
- Is or would be operating in violation or circumvention of any Federal, State, or local laws; or
- Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the AWA.

Under paragraph (b) of § 2.11, an applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

Similarly, § 2.12 provides that a license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

Although § 2.11(b) and § 2.12 refer to "the applicable rules of practice," the regulations do not specify which rules of practice actually apply. In order to clarify this point, we are amending the administrative regulations of the Office of the Secretary in 7 CFR part 1, subpart H, "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" (7 CFR 1.130 through 1.151). Specifically, we are amending § 1.131, "Scope and applicability of this subpart," to provide that the rules of practice contained in subpart H shall be applicable to all adjudicatory proceedings under the license denial and termination provisions of §§ 2.11 and 2.12.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement

Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

■ Accordingly, we are amending 7 CFR part 1 as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

■ 2. In § 1.131, paragraph (b) is amended as follows:

■ a. In paragraph (b)(3), by removing the word "and".

■ b. By redesignating paragraph (b)(4) as paragraph (b)(5) and by adding a new paragraph (b)(4) to read as set forth below.

§ 1.131 Scope and applicability of this subpart.

* * * * *

(b) * * *

(4) Adjudicatory proceedings under the regulations promulgated under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) for the denial of an initial license application (9 CFR 2.11) or the termination of a license during the license renewal process or at any other time (9 CFR 2.12); and

* * * * *

Done in Washington, DC, this 5th day of May, 2005.

Mike Johanns,

Secretary of Agriculture.

[FR Doc. 05–9444 Filed 5–11–05; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH64

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision; Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Holtec International HI–STORM 100 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published with the direct final rule.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219 (e-mail: *jmm2@nrc.gov*).

SUPPLEMENTARY INFORMATION: On February 28, 2005 (70 FR 9504), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the Holtec International HI–STORM 100 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to the Certificate of Compliance. Amendment No. 2 modifies the present cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes. The direct final rule was to become effective on May 16, 2005. The NRC also concurrently published an identical proposed rule on February 28, 2005 (70 FR 9550).

In the February 28, 2005, direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register**. As a result, the direct final rule would not take effect.

The NRC received significant adverse comment on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the February 28, 2005, direct final rule, NRC will address the comments received on the February 28, 2005, companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

William Borchardt,

Acting Executive Director for Operations.

[FR Doc. 05–9448 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20379; Directorate Identifier 2004–NM–174–AD; Amendment 39–14078; AD 2005–10–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This AD requires measuring the clearance between the compensator and the guide assembly of probe no. 1 on the outboard fuel tanks, and performing corrective actions if necessary. This AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent interference between the compensator and the guide assembly of probe no. 1, which could create an ignition source that could result in a fire or explosion.

DATES: This AD becomes effective June 16, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 16, 2005.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20379; the directorate identifier for this docket is 2004–NM–174–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Airbus Model A310 series airplanes. That action, published in the **Federal Register** on February 15, 2005 (70 FR 7700), proposed to require measuring the clearance between the compensator and the guide assembly of probe no. 1 on the outboard fuel tanks, and performing corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$65	None	$130	59	$7,670

Authority for this Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(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) 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2005–10–01 Airbus: Amendment 39–14078. Docket No. FAA–2005–20379; Directorate Identifier 2004–NM–174–AD.

Effective Date

(a) This AD becomes effective June 16, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model 310 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent interference between the compensator and the guide assembly of probe no. 1, which could create an ignition source that could result in a fire or explosion.

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.

Measurement

(f) Within 4,000 flight hours after the effective date of this AD, measure the clearance between the compensator and the guide assembly of probe no. 1 on the left- and right-hand outboard fuel tanks, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2152, dated January 12, 2004. If the clearance between the compensator and the guide assembly is less than 3 mm, before further flight, modify the guide assembly of probe no. 1 to provide clearance of 3 mm or more between the compensator and the guide assembly, in accordance with the Accomplishment Instructions of the service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install probe no. 1 on the left- or right-hand outboard fuel tank unless the requirements of paragraph (f) of this AD have been accomplished.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2004–125, dated July 21, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A310–28–2152, dated January 12, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, contact the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 29, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9063 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20345; Directorate Identifier 2004–NM–101–AD; Amendment 39–14083; AD 2005–10–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dornier Model 328–300 series airplanes. This AD requires installing a drain hole in the lower skin of the left- and right-hand elevator horns. This AD is prompted by reports of water found in the elevator assembly. We are issuing this AD to prevent water or ice accumulating in the elevator assembly, which could result in possible corrosion that reduces the structural integrity of the flight control surface, or in an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane.

DATES: This AD becomes effective June 16, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 16, 2005.

ADDRESSES: For service information identified in this AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20345; the directorate identifier for this docket is 2004–NM–101–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Dornier Model 328–300 series airplanes. That action, published in the **Federal Register** on February 15, 2005 (70 FR 7689), proposed to require installing a drain hole in the lower skin of the left- and right-hand elevator horns.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installing drain hole	1	$65	$100	$165	49	$8,085

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(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) 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2005–10–06 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Amendment 39–14083. Docket No. FAA–2005–20345; Directorate Identifier 2004–NM–101–AD.

Effective Date

(a) This AD becomes effective June 16, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier Model 328–300 series airplanes, serial numbers 3105 through 3219 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of water found in the elevator assembly. We are issuing this AD to prevent water accumulating in the elevator assembly, which could result in possible corrosion that reduces the structural integrity of the flight control surface, or in an unbalanced flight control surface. These conditions 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.

Installation

(f) Within 90 days after the effective date of this AD, install a drain hole in the lower skin of the left- and right-hand elevator horns in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328J–55–203, Revision 1, dated November 19, 2003.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) German airworthiness directive D–2004–005, dated January 8, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Dornier Service Bulletin SB–328J–55–203, Revision 1, dated November 19, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC. To review copies of the service information, contact the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 4, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9367 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20573; Airspace Docket No. 05–ACE–101]

Modification of Class E Airspace; Parsons, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Parsons, KS.

EFFECTIVE DATE: 0901 UTC, July 7, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 24, 2005 (70 FR 14976). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 7, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–9434 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20572; Airspace Docket No. 05–ACE–9]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Valentine, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Valentine, NE. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Valentine, NE.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Miller Field, Valentine, NE and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, July 7, 2005.

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

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 23, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E surface area and to modify other Class E airspace at Valentine, NE (70 FR 14601). The proposal was to establish a Class E surface area at Valentine, NE and also to modify the Class E5 airspace area to bring Valentine, NE airspace into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace designated as a surface area for an airport at Valentine, NE. The FAA has modified some existing instrument approach procedures (IAPs) and developed area navigation (RNAV) global positioning system (GPS) IAPs to serve Miller Field, Valentine, NE. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these IAPs. Weather observations will be provided by an Automatic Surface Observing System (ASOS) and communications will be direct with Denver Air Route Traffic Control Center.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Valentine, NE. An examination of this Class E airspace area for Valentine, NE revealed noncompliance with FAA directives. This corrects identified discrepancies by eliminating the northwest extension to the airspace area, decreasing the width of the southeast extension from 2.6 miles to 2.5 miles each side of the 149° bearing from the Valentine nondirectional radio beacon (NDB), decreasing the length of the southeast extension in from 7.9 miles from the airport to 7 miles from the NDB, defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Miller Field and brings the airspace area into compliance with FAA directives. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1 Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Miller Field.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Valentine, NE

Valentine, Miller Field, NE
(Lat. 42°51′128″ N., long. 100°32′51″ W.)
Valentine, NDB
(Lat. 42°51′42″ N., long 100°32′59″ W.)

Within a 4-mile radius of Miller Field and within 2.5 miles each side of the 149° bearing from the Valentine NDB extending from the 4-mile radius of the airport to 7 miles southeast of the NDB.

* * * * *

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

* * * * *

ACE NE E5 Valentine, NE

Valentine, Miller Field, NE
(Lat. 42°51′28″ N., long. 100°32′51″ W.)
Valentine NDB
(Lat. 42°51′42″ N., long. 100°32′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Miller Field and within 2.5 miles each side of the 149° bearing from the Valentine NDB extending from the 6.5-mile

radius of the airport to 7 miles southeast of the NDB.

* * * * *

Issued in Kansas City, MO, on May 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–9435 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 335 and 340

[Docket Number 001229368-5092-02]

RIN 0625-AA58

Imports of Certain Worsted Wool Fabric; Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Final rule.

SUMMARY: The Department of Commerce is issuing final regulations implementing Section 501(e) and Section 504(b) of the Trade and Development Act of 2000 ("the Act"). Section 501(e) requires the President to fairly allocate tariff rate quotas on the import of certain worsted wool fabrics, tariff rate quotas which were established by Sections 501(a) and 501(b) of the Act. Section 504(b) authorizes the President to modify the limitations on worsted wool fabric imports under the tariff rate quotas. The President has delegated to the Secretary of Commerce the authority to allocate the quantity of imports under the tariff rate quotas and to determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified.

DATES: This rule is effective on June 13, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

This supplementary information section is organized as follows:

A. Background

The Act creates two tariff rate quotas (TRQ), providing for temporary reductions for three years in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (new Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meter equivalents or such other quantity proclaimed by the President; and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (new HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meter equivalents or such other quantity proclaimed by the President.

The Act requires that the tariff rate quotas be allocated. More specifically, the President must ensure that the tariff rate quotas are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year.

The Act requires that the President annually consider requests by U.S. manufacturers of certain worsted wool apparel to modify the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, the President must consider specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel.

In Presidential Proclamation 7383, of December 1, 2000, the President authorized the Secretary of Commerce: (1) to allocate the imports of worsted wool fabrics under the tariff rate quotas; (2) to annually consider requests from domestic manufacturers of worsted wool apparel to modify the limitation on the quantity of worsted wool fabrics that may be imported under the tariff rate quotas; (3) to determine whether the limitations on the quantity of imports of worsted wool fabrics under the tariff rate quotas should be modified and to recommend to the President that appropriate modifications be made; and (4) to issue regulations to implement relevant provisions of the Act.

The Presidential Proclamation authorizing the Department of Commerce to issue regulations to implement these provisions was issued on December 1, 2000. Pursuant to the Act, the tariff rate quotas entered into force on January 1, 2001. Thus, there was good cause to find that in order to meet the statutory implementation date and to ensure that importers receive the benefit of the reduction in tariff rate as soon as possible, the otherwise applicable notice and comment procedures were impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). Moreover, for the same reason, there was good cause to find that the effective date of the interim rule should not be delayed until 30 days after its publication under 5 U.S.C. 553(d)(3). While the interim regulations became effective on January 22, 2001, the Department of Commerce solicited comments on the interim regulations and expressed particular interest in comments concerning any impact the regulations might have on small or medium sized businesses.

B. Public Comments Received and Department of Commerce Responses

The Department of Commerce received the comments described below from a number of parties, including businesses, trade associations and counsel for other interested parties. Comments specifically pertaining to the allocation of previous years' tariff rate quotas have been omitted as moot.

Comment: Applicants should be allowed to include in reported production amounts worsted wool fabric cut and sewn on behalf of an owner.

Response: The legislation states that the allocation is to be based on the amount of men's and boys' suits cut and sewn in the U.S. during the prior calendar year and shall be granted to persons (including, firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States. The fabric TRQ allocated to a licensee is intended for the licensee's own production, or production on its behalf by contractors using the licensee's owned fabric, and not for the cutting and sewing of garments for others with fabric they do not own.

Comment: Persons involved in the production of men's and boys' worsted wool suits, suit-type jackets and trousers other than those who cut and sew such garments, such as importers of worsted wool fabric, should be allowed to apply for licenses.

Response: The legislation states that the President is to ensure that such fabrics are fairly allocated to persons (including, firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Therefore, others such as importers of worsted wool fabric, are not eligible to apply for licenses.

Comment: The definition of Worsted Wool Suits should be amended to make it clear that the reference to the 85 percent wool requirement is limited to the shell fabric and does not apply to the suit itself.

Response: The definition of Worsted Wool Suits is amended in this rule to men's and boys' worsted wool suits, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

Comment: The applicant, rather than the importer of the worsted wool fabric, should certify that the fabric is suitable for making suits.

Response: The requirement that the importer of the worsted wool fabric certify that the fabric is suitable for making suits, suit-type coats and trousers was established in Title V of the Trade and Development Act of 2000 and is presently set forth in the U.S. notes 15b and 16b of sub-chapter II of chapter 99 of the Harmonized Tariff Schedule of the United States of 2005. Because the requirement was mandated by statute, the Department is unable to change the regulations to allow the applicant to provide the certification.

Comment: The rule should specify the information to be supplied by a licensee to an importer in a written authorization pursuant to which the importer will import worsted wool fabric within the TRQ.

Response: Written authorization guidelines from a licensee to an importer are included in the document A Conditions for License Use which is affixed to the back of each License issued by the Department of Commerce.

C. Action Being Taken by the Department of Commerce

The Department of Commerce is revising 15 CFR Parts 335 and 340. 15 CFR Part 335 sets forth regulations regarding the issuance and effect of licenses for the allocation of worsted wool fabric under the tariff rate quotas established by Section 501 of the Act. 15 CFR Part 340 sets forth regulations regarding the procedures for considering requests to modify the limitations on the quantity of imports of fabrics of worsted wool fabric under the tariff rate quotas established by Section 501 of the Act.

Part 335

Section 501(e) of the Act requires that the worsted wool fabrics imported under the tariff rate quotas be "fairly allocated" to persons "who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year." As the Joint Explanation of the Committee of Conference ("Conference Report") makes clear, Congress intended the tariff rate quotas to address the duty situation faced by U.S. wool suit manufacturers, in which worsted wool fabric is subject to considerably higher duties than worsted wool suits, a situation compounded by reductions in tariffs on wool suits under free trade agreements with Canada and Mexico.

The Department of Commerce will annually solicit applications for licenses for an allocation of the forthcoming calendar year's tariff rate quotas on worsted wool fabrics on or around August 31 of the year preceding the tariff rate quota year, in order to allow companies to be informed of their allocation as early as possible while still allowing an allocation based on previous year production. The Department intends to make its determination regarding the allocation on or about November 1 and to issue licenses no later than December 31 of the year preceding the tariff rate quota year.

Each of the two tariff rate quotas will be allocated based on previous year production utilizing the worsted wool fabric that is the subject of the tariff rate quota. That is, the tariff rate quota on worsted wool fabric with average fiber diameters greater than 18.5 microns (HTS 9902.51.11) will be allocated based on production utilizing this type of worsted wool fabric, while the tariff rate quota on worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS 9902.51.12) will be allocated based on production utilizing this type of worsted wool.

For reporting subsequent year production information, applicants will be required to report production based on micron count of the worsted wool fabric. In order to utilize the most current data possible for all years, and to meet the statutory requirement that the allocation be based on production during the prior calendar year, each tariff rate quota will be allocated based on production during the first six months of the previous calendar year, annualized.

Pursuant to the statutory requirement, allocation will be limited to persons who cut and sew three types of garments during the calendar year of the application: (1) men's and boys' worsted wool suits; (2) men's and boys' worsted wool suit-type jackets; and (3) men's and boys' worsted wool trousers. Only manufacturers of all three types of garments will be eligible for an allocation. Pursuant to the statutory requirement that allocation be based on the men's and boys' worsted wool suits cut and sewn during the prior calendar year, in allocating the tariff rate quotas, only production of men's and boys' worsted wool suits will be considered. To be considered, a worsted wool garment's outer surface must contain at least 85 percent by weight worsted wool, which is consistent with the definitions of wool fiber and fabric in the Act and the Conference Report.

In order to fairly allocate the tariff rate quotas, manufacturers that utilize imported worsted wool fabric in production will be provided a greater allocation than manufacturers that utilize domestic worsted wool fabric. This will allow the manufacturers that will actually use the imported fabric that is subject to the tariff rate quotas to obtain a relatively greater share of the fabric, as compared to manufacturers that use only domestic fabric. For the purpose of calculating allocations, suit production will be increased by the ratio of imported fabric used to total fabric used in the production of men's and boys' suits. For example, if an applicant uses imported fabric for 30 percent of its worsted wool suits production, that applicant's suit production level will be increased by 30 percent for purposes of calculating the applicant's allocation.

In order to ensure that the tariff rate quotas are fully utilized, a licensee that will not import the full quantity allocated to it is required to surrender the unused allocation to the Department of Commerce for reallocation. The quantity surrendered will be reallocated to licensees that apply for a reallocation on the same basis as the original allocation. A licensee that does not surrender unused allocation and fails to import at least 95 percent of the quantity allocated will be penalized in the subsequent year by a reduction in its allocation proportionate to the amount unused.

Part 340

Section 504(b) of the Act requires the President to consider, on an annual basis, requests by U.S. manufacturers of

certain worsted wool apparel to modify the limit on importation under the tariff rate quotas. As the Act requires the consideration of such requests "on an annual basis," a petition process will take place for each year the tariff rate quotas are in effect. Each year, the Department of Commerce will cause to be published in the **Federal Register** a notice soliciting requests by U.S. manufacturers for modification of the limit for the following year. The Department will then cause to be published in the **Federal Register** a notice soliciting comments by any interested person, including U.S. manufacturers of worsted wool fabric, wool yarn, wool top and wool fiber, regarding the requested modification or modifications. In order to allow manufacturers and other interested persons to submit the most current data possible and to allow the Department to make its determination prior to January 1, manufacturers will have 15 days to submit a request and interested persons will have 20 days to submit comments.

Within 30 days of the end of the period for receiving public comments regarding requested modification or modifications, the Department will make a determination whether the limitations should be modified and recommend to the President that appropriate modification be made. The determination and recommendation will be based on the U.S. market conditions, particularly those factors set forth in the Act.

D. Statutory and Executive Order Reviews

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). These information collection requirements have received PRA approval from the Office of Management and Budget (OMB) under control number 0625-0240. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The information collected will be used by the Department to allocate the tariff rate quota among U.S. manufacturers and to determine whether the tariff rate quota limitations should be modified. Responses to the collection of information are required for a manufacturer to receive an allocation of the tariff rate quota, to submit a request for a modification, and to comment on such a request. Confidentiality of information will be handled in accordance with §335.3(e) and 340.5(b). Records substantiating information provided in an application to receive an allocation must be retained. It is estimated that the annual public burden for the collection will average: (1) seven hours per application for an allocation of a tariff rate quota; (2) one hour per application for a reallocation; (3) 24 hours per request for a modification of a limitation on the tariff rate quotas; and (4) 24 hours for comments on such a request. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Pursuant to Executive Order 12866, this final rule has been determined to be not significant.

Dated: May 5, 2005.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

List of Subjects

15 CFR Part 335

Imports, Quotas, Reporting and recordkeeping, Tariffs, Textiles.

15 CFR Part 340

Imports, Quotas, Reporting and recordkeeping, Tariffs, Textiles.

■ For the reasons stated in the preamble, 15 CFR Parts 335 and 340 are revised to read as follows:

PART 335—IMPORTS OF WORSTED WOOL FABRIC

Sec.

Authority: Title V Pub. L. 106-200, 114 Stat. 299; Presidential Proclamation 7383, 65 FR 76551, 3 CFR, 2000 Comp., p.212.

§ 335.1 Purpose.

This part sets forth regulations regarding the issuance and effect of licenses for the allocation of Worsted Wool Fabric under the Tariff Rate Quotas established by Section 501 of the Act.

§ 335.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106-200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Licensee means an applicant for an allocation of the Tariff Rate Quotas that receives an allocation and a license.

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.12).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

§ 335.3 Applications to receive allocation.

(a) In each year prior to a Tariff Rate Quota Year, the Department will cause to be published a **Federal Register** notice soliciting applications to receive an allocation of the Tariff Rate Quotas.

(b) An application for a Tariff Rate Quota allocation must be received, or postmarked by the U.S. Postal Service, within 30 calendar days after the date of publication of the **Federal Register** notice soliciting applications.

(c) During the calendar year of the date of the application, an applicant must have cut and sewed in the United States all three of the following apparel products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers. The applicant may either have cut and sewn these products on its own behalf or had another person

cut and sew the products on the applicant's behalf, provided the applicant owned the fabric at the time it was cut and sewn. The application must contain a statement to this effect.

(d) An applicant must provide the following information in the format set forth in the application form provided by the Department:

(1)*Identification.* Applicant's name, address, telephone number, fax number, and federal tax identification number; name of person submitting the application, and title, or capacity in which the person is acting for the applicant.

(2) *Production.* Name and address of each plant or location where Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers were cut and sewn by the applicant and the name and address of all plants or locations that cut and sewed such products on behalf of the applicant. Production data, including the following: the quantity and value of the Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers cut and sewn in the United States by applicant, or on behalf of applicant, from fabric owned by applicant. This data must indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers the outer surface of which contains at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. This data must also indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers the outer surface of which contains least 85 percent worsted wool fabric by weight with average diameter greater than 18.5 microns. Production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(3) *Worsted Wool Fabric.* Data indicating the quantity and value of the Worsted Wool Fabric used in reported production.

(4) *Certification.* A statement by the applicant (if a natural person), or on behalf of applicant, by an employee, officer or agent, with personal knowledge of the matters set out in the application, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(e) *Confidentiality.* Any business confidential information provided pursuant to this section that is marked "business confidential" will be kept confidential and protected from disclosure to the full extent permitted by law.

(f) *Record retention.* The applicant shall retain records substantiating the information provided in paragraphs (d)(2), (3), and (4) of this section for a period of 3 years and the records must be made available upon request by an appropriate U.S. government official.

§ 335.4 Allocation.

(a) Each Tariff Rate Quota (HTS 9902.51.11 and HTS 9902.51.12) will be allocated separately. Allocation will be based on an applicant's Worsted Wool Suit production, on a weighted average basis, and the proportion of imported Worsted Wool Fabric consumed in the production of Worsted Wool Suits.

(b) For the purpose of calculating allocations, Worsted Wool Suit production will be increased by the percentage of imported fabric consumed in the production of Worsted Wool Suits to total fabric consumed in this production. For example, if an applicant uses 30 percent imported fabric in the production of Worsted Wool Suits, that applicant's production level will be increased by 30 percent.

(c) The Department will cause to be published in the **Federal Register** its determination to allocate the Tariff Rate Quotas and will notify applicants of their respective allocation as soon as possible. Promptly thereafter, the Department will issue licenses.

§ 335.5 Licenses.

(a) Each Licensee will receive a license, which will include a unique control number. The license is subject to the surrender and reallocation provisions in §335.6.

(b) A license may be exercised only for fabric entered for consumption, or withdrawn from warehouse for consumption, during the Tariff Rate Quota Year specified in the license. A license will be debited on the basis of date of entry for consumption or withdrawal from warehouse for consumption.

(c) A Licensee may import fabric certified by the importer as suitable for use in making suits, suit-type jackets, or trousers under the appropriate Tariff Rate Quota as specified in the license (i.e., under the Tariff Rate Quota for fabric of worsted wool with average fiber diameters greater than 18.5 micron or the Tariff Rate Quota for fabric of worsted wool with average fiber diameters of 18.5 micron or less) up to the quantity specified in the license subject to the Tariff Rate Quota duty rate. Only a Licensee or an importer authorized by a Licensee will be permitted to import fabric under the Tariff Rate Quotas and to receive the Tariff Rate Quota duty rate.

(d) The term of a license shall be the Tariff Rate Quota Year for which it is issued. Fabric may be entered or withdrawn from warehouse for consumption under a license only during the term of that license. The license cannot be used for fabric entered or withdrawn from warehouse for consumption after December 31 of the year of the term of the license.

(e) The importer of record of fabric entered or withdrawn from warehouse for consumption under a license must be the Licensee or an importer authorized by the Licensee to act on its behalf. If the importer of record is the Licensee, the importer must possess the license at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501).

(f) A Licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by electronic notice to the importer and providing a copy of such authorization to the Department. A Licensee may only withdraw authorization from an importer by notifying the importer, in writing or by electronic notice, and providing a copy to the Department.

(g) The written authorization must include the unique number of the license, must specifically cover the type of fabric imported, and must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to obtain the applicable Tariff Rate Quota duty rate.

(h) It is the responsibility of the Licensee to safeguard the use of the license issued. The Department and the U.S. Customs Service will not be liable for any unauthorized or improper use of the license.

§ 335.6 Surrender, reallocation and license utilization requirement.

(a) Not later than September 30 of each Tariff Rate Quota Year, a Licensee that will not import the full quantity granted in a license during the Tariff Rate Quota Year shall surrender the allocation that will not be used to the Department for purposes of reallocation through a written or electronic notice to the Department, including the license control number and the amount being surrendered. The surrender shall be

final, and shall apply only to that Tariff Rate Quota Year.

(b) For purposes of this section, "unused allocation" means the amount by which the quantity set forth in a license, including any additional amount received pursuant to paragraph (d) of this section, exceeds the quantity entered under the license, excluding any amount surrendered pursuant to paragraph (a) of this section.

(c) The Department will notify Licensees of any amount surrendered and the application period for requests for reallocation. A Licensee that has imported, or intends to import, a quantity of Worsted Wool Fabric exceeding the quantity set forth in its license may apply to receive additional allocation from the amount to be reallocated. The application shall state the maximum amount of additional allocation the applicant will be able to use.

(d) The amount surrendered will be reallocated to Licensees that have applied for reallocation. The entire amount surrendered will be reallocated pro-rata among applicants based on the applicant's share of the annual allocation, but will not exceed the amount set forth in the reallocation application as the maximum amount able to be used.

(e) A Licensee whose unused allocation in a Tariff Rate Quota Year exceeds five percent of the quantity set forth in its license shall be subject to having its allocation reduced in the subsequent Tariff Rate Quota Year. The subsequent Tariff Rate Quota Year allocation will be reduced from the quantity such Licensee would otherwise have received by a quantity equal to 25 percent of its unused allocation from the prior year. A Licensee whose unused allocation in two consecutive Tariff Rate Quota Years exceeds five percent of the quantity set forth in its license shall have its allocation reduced in the subsequent Tariff Rate Quota Year by a quantity equal to 50 percent of its unused allocation from the prior year.

(f) No penalty will be imposed under paragraph (e) of this section if the Licensee demonstrates to the satisfaction of the Department that the unused allocation resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the fabric, act of God, or force majeure.

§ 335.7 Modifications of the limitation.

In the event the limitation on the quantity of imports of Worsted Wool Fabric under the Tariff Rate Quotas is increased, the increase will be allocated on the same basis as the rest of the Tariff Rate Quotas. Licenses will be issued or adjusted accordingly.

PART 340—MODIFICATION OF THE TARIFF RATE QUOTA LIMITATION ON WORSTED WOOL FABRIC IMPORTS

Sec.

Authority: Authority: Pub. L. 106-200, 114 Stat. 299; Presidential Proclamation 7383, 65 FR 76551, 3 CFR, 2000 Comp., p. 212.

§ 340.1 Purpose.

This part sets forth regulations regarding the procedures for considering requests to modify the limitations on the quantity of imports of fabrics of worsted wool under the Tariff Rate Quotas established by Section 501 of the Act. Section 504 of the Act requires annual consideration of such requests made by U.S. manufacturers of certain apparel products made of Worsted Wool Fabrics and grants the authority to modify the limitations.

§ 340.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106-200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.12).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, the outer surface of which contains at least 85 percent by weight worsted wool fabric.

§ 340.3 Requests for modification.

(a) On an annual basis, the Department will cause to be published a **Federal Register** notice soliciting requests from U.S. manufacturers of Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers to modify the limitations on the quantity of imports of fabrics of worsted wool under the Tariff Rate Quotas. Requests must be received, or postmarked, on a date no later than 15 calendar days after the date of the **Federal Register** notice.

(b) A request shall include:

(1) The name, address, telephone number, fax number, and Internal Revenue Service number of the requester;

(2) The relevant worsted wool apparel product(s) manufactured by the person(s), that is, Worsted Wool Suits, Worsted Wool Suit-Type Jackets, or Worsted Wool Trousers;

(3) The modification requested, including the amount of the modification and the limitation that is the subject of the request (HTS heading 9902.51.11 and/or 9902.51.12); and

(4) A statement of the basis for the request, including all relevant facts and circumstances.

(c) A request should include the following information for each limitation that is the subject of the request, to the extent available:

(1) A list of suppliers from which the requester purchased domestically produced Worsted Wool Fabric during the 12 months preceding the request, the dates of such purchases, the quantity purchased, the quantity of imported Worsted Wool Fabric purchased, the countries of origin of the imported Worsted Wool Fabric purchased, the average price paid per square meter of the domestically produced Worsted Wool Fabric purchased, and the average price paid per square meter of the imported Worsted Wool Fabric purchased;

(2) A list of domestic Worsted Wool Fabric producers that declined, on request, to sell Worsted Wool Fabric to

the requester during the 12 months preceding the request, indicating the product requested, the date of the order, the price quoted, and the reason for the refusal;

(3) The requester's domestic production and sales for the most recent six month period for which such data is available and the comparable six month period in the previous year, for each of the following products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, or Worsted Wool Trousers;

(4) Evidence that the requester lost production or sales due to an inadequate supply of domestically-produced Worsted Wool Fabric on a cost competitive basis; and

(5) Other evidence of the inability of domestic producers of Worsted Wool Fabric to supply domestically produced Worsted Wool Fabric to the requester.

§ 340.4 Comments regarding requested modification.

(a) If the Department receives a request or requests from a U.S. manufacturer under §340.3, the Department will cause to be published in the **Federal Register** a notice summarizing the request or requests and soliciting comments from any interested person, including U.S. manufacturers of Worsted Wool Fabric, wool yarn, wool top and wool fiber, regarding the requested modification. Comments must be received, or postmarked, on a date not later than 20 calendar days after the date of the **Federal Register** notice.

(b) If the person submitting comments is a domestic producer of Worsted Wool Fabric, comments should include, to the extent available, the following information for each limitation with respect to which comments are being made:

(1) A list of domestic manufacturers of Worsted Wool Suits, Suit-Type Jackets, or Trousers for whom orders were filled during the twelve months prior to the submission of the comments, the date of such orders, the total quantity ordered and supplied in square meters of domestically produced Worsted Wool Fabric and of imported Worsted Wool Fabric, and the average price received per square meter of domestically produced Worsted Wool Fabric and of imported Worsted Wool Fabric for such orders.

(2) A list of all requests to purchase Worsted Wool Fabric during the twelve months prior to the submission of the comments that were rejected by the person submitting the comments, indicating the dates of the requests, the quantity requested, the price quoted, and the reasons why the request was rejected;

(3) Data indicating increase and/or decrease in production and sales for the most recent six month period for which data is available and the comparable six month period in the previous year of domestically-produced Worsted Wool Fabrics used in the production of Worsted Wool Suits, Suit-Type Jackets and Trousers.

(4) Evidence of lost sales due to the temporary duty reductions on certain Worsted Wool Fabric under the Tariff Rate Quotas; and

(5) Other evidence of the ability of domestic producers of Worsted Wool Fabric to meet the needs of the manufacturers of Worsted Wool Suits, Suit-Type Jackets and Trousers in terms of quantity, variety, and other relevant factors.

§ 340.5 Requests for modification and comments.

(a) Requests for modification and comments must be accompanied by a statement by the person submitting the request or comments (if a natural person), or an employee, officer or agent of the legal entity submitting the request or comments, with personal knowledge of the matters set forth therein, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(b) Any business confidential information provided pursuant to this section that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. To the extent business confidential information is provided, a non-confidential submission shall also be provided, in which business confidential information is summarized or, if necessary, deleted.

§ 340.6 Requests for additional information.

The Department may request additional information from any manufacturer of Worsted Wool Suits, Suit-Type Jackets and Trousers, or manufacturer of Worsted Wool Fabric, wool yarn and wool top and fiber concerning information relevant to modifying the limitations.

§ 340.7 Determination.

(a) Based on information obtained, including information on market conditions obtained pursuant to the monitoring required under Section 504(a) of the Act, the Department shall consider the following United States market conditions as required by Section 504(b)(2) of the Act:

(1) Increases or decreases in sales of the domestically-produced Worsted Wool Fabrics used in the manufacture of Worsted Wool Suits, Suit-Type Jackets and Trousers;

(2) Increases or decreases in domestic production of such Worsted Wool Fabrics;

(3) Increases or decreases in domestic production and consumption of Worsted Wool Suits, Suit-Type Jackets and Trousers;

(4) The ability of domestic producers of Worsted Wool Fabrics to meet the needs of domestic manufacturers of Worsted Wool Suits, Suit-Type Jackets and Trousers in terms of quantity and the ability to meet market demands for the apparel items;

(5) Evidence that domestic manufacturers of Worsted Wool Fabrics used in the manufacture of Worsted Wool Suits, Suit-Type Jackets and Trousers have lost sales due to the temporary duty reductions on certain fabrics of worsted wool under the Tariff Rate Quota;

(6) Evidence that domestic manufacturers of Worsted Wool Suits, Suit-Type Jackets and Trousers have lost sales due to the inability to purchase adequate supplies of worsted wool fabrics on a cost competitive basis; and

(7) Price per square meter of imports and domestic sales of Worsted Wool Fabrics.

(b) Not later than 30 calendar days after the end of the comment period provided for in §340.4(a), and on the basis of its consideration of the market conditions set forth in paragraph (a) of this section and other relevant factors, and using the facts available, the Department will determine whether the limitations on the quantity of imports under the Tariff Rate Quotas should be modified and recommend to the President that appropriate modifications be made. Consistent with section 504(b)(3)(B) of the Act, such modification shall not exceed 1,000,000 square meter equivalents for each of the Tariff Rate Quotas.

[FR Doc.05–9411 Filed 5–11–05; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–027A]

RIN 1218–AC13

Oregon State Plan; Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final state plan approval.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision to grant final approval to the Oregon State Plan. As a result of this affirmative determination under Section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA's standards and enforcement authority no longer apply and Federal concurrent jurisdiction is relinquished with respect to occupational safety and health issues covered by the Oregon plan (with the exception of temporary labor camps). Federal enforcement jurisdiction is retained over private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

EFFECTIVE DATE: May 12, 2005.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Kevin Ropp, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Room N–3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2244. An electronic copy of this **Federal Register** notice is available on OSHA's Web site at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the "Act"), provides that states which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a state plan. Procedures for state plan submission and approval are set forth in regulations at 29 CFR part 1902. If the Assistant Secretary, applying the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for state standards and enforcement which are "at least as effective" as Federal standards and enforcement, "initial approval" is granted. A state may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by Section 18(e) of the Act. A state plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurances by the state that it will take the necessary "developmental steps" to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a state's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a state plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)). A state must have enacted its enabling legislation, promulgated standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards applicable to those issues covered by the state plan if the state program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under Section 18(e) of the Act (usually referred to as "final approval" of the state plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the state with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for Section 18(e) determinations are found at 29 CFR part 1902, subpart D. In general, in order to be granted final approval, actual performance by the state must be "at least as effective" overall as the Federal OSHA program in all areas covered under the state plan.

An additional requirement for final approval consideration is that a state must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that state. This requirement stems from a 1978 court order by the U.S. District Court for the District of Columbia in *AFL–CIO* v. *Marshall*, C.A. No.74–406, that directed the Assistant Secretary to calculate for each state plan state the number of enforcement personnel needed to assure a "fully effective" enforcement program.

Another requirement for final approval consideration is that a state must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data necessary to continually evaluate whether the state's performance meets the statutory and regulatory criteria for final and continuing approval.

History of the Oregon Plan and of Its Compliance Staffing Benchmarks

A history of the Oregon State Plan, a description of its provisions, and a discussion of the compliance staffing benchmarks established for Oregon are contained in the December 16, 2004 **Federal Register** notice (69 FR 75436) proposing that final approval under section 18(e) of the Act be granted. The Oregon State Plan was submitted on June 6, 1972, and initially approved on December 22, 1972 (37 FR 28628, Dec. 28, 1972). Concurrent Federal enforcement jurisdiction was suspended on January 23, 1975 (40 FR 18427, April 28, 1975). The Oregon State Plan was certified as having completed all developmental steps on September 15, 1982 (47 FR 42105, Sept. 24, 1982), and revised compliance staffing benchmarks for Oregon were approved on August 11, 1994 (59 FR 42493, Aug. 18, 1994).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR part 1902, subpart D. On December 16, 2004, OSHA published notice (69 FR 75436) that the Oregon State Plan was eligible

for a determination as to whether final approval of the plan should be granted under Section 18(e) of the Act. The determination of eligibility was based on the monitoring of state operations for at least one year following certification, state participation in the Federal-state Integrated Management Information System, and staffing in accordance with the revised state compliance staffing benchmarks.

The December 16, 2004, **Federal Register** notice set forth a general description of the Oregon State Plan and summarized the results of Federal OSHA's monitoring of state operations during the period from October 1, 2002 through September 30, 2003. In addition to the information set forth in the notice itself, OSHA made available as part of the record extensive and detailed exhibits documenting the plan, including copies of the state legislation, administrative regulations, and procedural manuals under which Oregon operates its plan.

The most recent comprehensive evaluation report covering the period of October 1, 2002, through September 30, 2003, which was extensively summarized in the December 16, 2004, proposal and provided the principal factual basis for the proposed 18(e) determination, was included in the docket.

To assist and encourage public participation in the 18(e) determination, copies of all docket materials were available electronically at *http://dockets.osha.gov*, and were maintained in the OSHA Docket Office in Washington, DC, in the OSHA Regional Office in Seattle, and at the Oregon Occupational Safety and Health Division in Salem, Oregon. A summary of the December 16, 2004, notice, with an invitation for public comments, was published in Oregon on December 17, 2004, in *The Oregonian*.

The December 16, 2004, notice invited interested persons to submit, by January 18, 2005, written comments and views regarding the Oregon plan and whether final approval should be granted. An opportunity to request an informal public hearing also was provided. Seven comments were received in response to this proposal; none requested an informal hearing.

Summary and Evaluation of Comments

OSHA has encouraged interested members of the public to provide information and views regarding operations under the Oregon plan to supplement the information already gathered during OSHA's monitoring and evaluation of plan administration.

In response to the December 16, 2004, proposal, OSHA received comments from: John Kirkpatrick, Business Representative, International Union of Painters and Allied Trades, AFL–CIO [Ex. 5–1]; Jim Geisinger, Executive Vice President, Associated Oregon Loggers, Inc. [Ex. 5–2]; Brian Clarke, Corporate Safety Director, Hoffman Construction Companies [Ex.5–3]; Daniel J. Sabatino, Loss Control Consultant, Safety & Risk Management Consulting [Ex. 5–4]; Steven F. Ramsey, Loss Control Manager, Safeway, Inc.—Portland Division [Ex. 6–1]; Lynda Enos, Ergonomics Consultant, Human Fit [Ex. 6–2]; and Patrick M. Bridges, Oregon Home Builders Association [Ex. 6–3]. All seven comments expressed unqualified support for final approval. All of these comments indicated that Oregon has established and operates a safety and health program that effectively protects employees.

Specifically, the commenters commended the Oregon State Plan for, among other things: (1) Making significant progress in reducing work-related injuries; (2) having proactive and competent leadership; (3) maintaining a compliance, consultant and technical staff that is highly trained, very professional, accommodating, fair and technically accurate; (4) providing excellent web-based and classroom safety training (including for small businesses); (5) making extensive efforts to address ergonomics and safety issues in health care facilities; (6) developing partnerships with businesses and professional associations to provide high quality safety and health education and injury prevention activities and programs to employers, employees and safety and health professionals; (7) adopting an exemplary logging code which recognizes the unique and site-specific characteristics of the Pacific Northwest logging industry; and (8) creating innovative committees that provide grants to identify and create training programs for workplace safety and health, scholarships for dependents of workers killed or permanently disabled in workplace accidents, and funding to make workplace modifications to improve safety.

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a state plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Oregon State Plan. This information has included all previous evaluation findings since certification of completion of the state plan's developmental steps, especially data for the period October 1, 2002 through September 30, 2003, and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) Standards. Section 18(c)(2) of the Act requires state plans to provide for occupational safety and health standards which are at least as effective as Federal standards. *See also* 29 CFR 1902.3(c)(1) and 1902.4(b)(2)(i)–(ii). If the state adopts standards that are not identical to corresponding Federal standards, they must be promulgated through a procedure allowing for the consideration of all pertinent factual information and the participation of all interested persons (29 CFR 1902.4(b)(2)(iii)). Additionally, the state program must provide for prompt and effective standards setting actions when necessary to protect workers from new and unforeseen hazards, *e.g.*, via the authority to promulgate emergency temporary standards (29 CFR 1902.4(b)(2)(v)). State standards must protect employees from exposure to hazards, *e.g.*, by requiring the use of suitable protective equipment or technological controls (29 CFR 1902.4(b)(2)(vii)). Standards dealing with toxic materials or harmful physical agents must assure that each exposed employee will be protected throughout his or her working life (29 CFR 1902.4(b)(2)(i)). In addition, state standards generally must provide for furnishing employees with appropriate information regarding hazards in their workplaces, *e.g.*, through labels, postings, and medical examinations (29 CFR 1902.4(b)(2)(vi)). Where applicable to products distributed or used in interstate commerce, state standards that differ from Federal standards must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

In order to qualify for final state plan approval, a state program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)), to have timely adopted all Federal standards or standards that are at least as effective (29 CFR 1902.37(b)(3)), to have interpreted and applied its standards in a manner consistent with the Federal program (29 CFR 1902.37(b)(4)), and to have corrected any deficiencies resulting from administrative or judicial challenges to the state standards (29 CFR 1902.37(b)(5)).

Oregon's laws and regulations, previously approved by OSHA and made a part of the record in this proceeding, as written and applied, are in accord with all of the requirements

for state standards set out above and in 29 CFR part 1902. As documented in the approved Oregon State Plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the December 16, 2004, notice, the Oregon plan provides for the adoption of standards and amendments thereto which are either identical or equivalent to Federal standards. And as noted in the 18(e) Evaluation Report and summarized in the December 16, 2004 **Federal Register** notice, in actual operation Oregon has adopted standards in a timely manner which are either identical to or at least as effective as Federal standards.

Although Oregon does not automatically adopt standards which are identical to the Federal standards, it usually adopts Federal standards by reference and sometimes adds state-initiated provisions under its own regulatory numbering system. Oregon OSHA ("OR–OSHA") adopts standards through a promulgation process that provides notification to the public of its intent to adopt a standard. OR–OSHA publishes the proposed standard in the Secretary of State's Bulletin, asks for comments, and may hold hearings. After review of all comments, appropriate revisions are made and the standard is formally adopted and its effective date established. When OR–OSHA is considering substantive standard revisions, a committee of affected employers, employees, and other experts is convened to provide input and draft language before comments are requested from the public. Thus, OR–OSHA's standards development process is similar to Federal OSHA's and provides full opportunity for public input.

Some Oregon standards and related enforcement policies differ from their Federal counterparts, such as the state's enforcement policy requiring employers to pay for personal protective equipment, Oregon's additional rules for personal protective equipment and for explosives and blasting agents, and the state's different rules for air contaminants, bloodborne pathogens (needlestick devices), spray finishing, concrete and masonry construction, and fall protection in construction. Oregon has also adopted a number of standards which do not have Federal counterparts, including those relating to workplace safety committees, crane operator training, thiram, reinforced plastics manufacturing, ornamental tree and shrub services, and some forest activities (logging) requirements.

OSHA's monitoring has found that OR–OSHA has interpreted and applied its standards in a manner comparable to the Federal program. There have been administrative and judicial challenges to the standards in Oregon, but they have all been satisfactorily resolved.

Therefore, in accordance with Section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds that the Oregon program, in actual operation, provides for standards adoption, correction (when found deficient), interpretation, and application at least as effective as the Federal program.

(2) Variances. A state plan is expected to have authority and procedures for granting variances comparable to the Federal program (29 CFR 1902.4(b)(2)(iv)). The Oregon State Plan contains such provisions in laws and regulations which have been previously approved by OSHA. In order to qualify for final state plan approval, permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)). Temporary variances granted must assure compliance as early as possible (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the December 16, 2004 notice, Oregon granted three permanent variances during the 18(e) evaluation period, and all were processed in accordance with state procedures and the criteria in 29 CFR part 1902. During the Section 18(e) evaluation period, no temporary variances were granted.

Accordingly, OSHA finds that the Oregon program is able to effectively grant variances from its occupational safety and health standards.

(3) Enforcement. Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require state programs to enforce standards in a manner that is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. *See also* Section 18(c)(4) of the Act and 29 CFR 1902.3(g). The state must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement, including compulsory process (29 CFR 1902.4(c)(2)).

The Oregon occupational safety and health statutes and implementing regulations, previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms at least as effective as those in the Federal Act. In order to be qualified for final approval, the state must have adhered to all approved procedures to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The 18(e) Evaluation Report indicates no significant lack of adherence to such procedures.

(a) Inspections. In order to qualify for final approval, the state program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). *See also* 29 CFR 1902.4(c)(2)(i). Data contained in the 18(e) Evaluation Report noted that Oregon relies on injury and illness claims data from the state workers' compensation system as the primary means to identify employers for high-hazard, programmed safety and health inspections. This site-specific targeting is augmented by workers' compensation claim severity classifications, an employer's history, and other factors to arrive at a ranking on an inspection list. Separate lists are made for general industry, construction, logging, and health. Oregon's strategic plan is focused on reducing silica exposures, lead in construction exposures, and fall hazards. The state has targeted inspections in the following industries with high rates of injuries and illnesses: Agriculture, construction, lumber/wood, food/kindred products, and health care. During the period from October 2002 through September 2003, 76% of Oregon's safety inspections and 44% of health inspections were programmed. During this period, 40% of programmed safety inspections and 25% of programmed health inspections uncovered serious, willful, or repeat violations. This is less than the percentage of Federal programmed inspections with serious violations; however, state officials assert that fewer serious violations per inspection are expected in Oregon because of a higher frequency of inspections, workplace safety committee (and employer safety and health program) requirements, and a large consultation program. Therefore, OSHA has concluded that the state's inspection targeting system is satisfactory.

(b) Employee Notice and Participation in Inspections. State plans must provide for inspections in response to employee complaints and must provide an opportunity for employees and their representatives to point out possible violations through such means as employee participation during the inspection (29 CFR 1902.4(c)(2)(i)–(iii)).

Oregon has procedures similar to those used by Federal OSHA for processing and responding to complaints and providing for employee participation in inspections. The data indicate that during the evaluation

period the state was timely in responding to employee complaints, responding to 95% of serious safety and health complaints by inspection within the prescribed time frame of 5 working days. In addition, OR–OSHA provided complainants with timely response letters 94% of the time. During FY 2003, Oregon responded to 729 safety and health complaints.

Like Federal OSHA, the state has procedures which require that employees have an opportunity to participate in inspections, either through representation on the walkaround or through a reasonable number of employee interviews. No problems have been noted concerning employee participation in Oregon inspections.

In addition, the state plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)). Also, the state plan must ensure that employees have access to information about their exposure to regulated agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Oregon requires that a poster approved by OSHA be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications are set forth in the previously approved state law and regulations which are at least as effective as Federal requirements. Information about employee exposure to regulated agents is provided through state standards which are identical to or at least as effective as the Federal. No problems have been noted regarding notice of these actions to employers and employees. Therefore, OSHA has concluded that the state's performance in this area is effective.

(c) Nondiscrimination. State plans are expected to protect employees against discharge or discrimination for exercising their rights under the state's program. The state program must include provisions providing for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). Section 654.062(5) of the Oregon Safe Employment Act and state regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Under Oregon law, the Bureau of Labor and Industries (BOLI) has jurisdiction for discrimination cases. OR–OSHA contracts with BOLI for discrimination complaint processing. A total of 54 complaints alleging discrimination were investigated during the evaluation period, four of which were found to be meritorious. Oregon met the 90-day time limit for completing discrimination investigations 67% of the time. The state's goal is to complete investigations within 90 days in 85% of cases. OR–OSHA is actively working with BOLI to improve case determination timeliness, to ensure that a review of the "prima facie" elements is conducted for every discrimination complaint, and to create case file documentation whenever a decision is made not to conduct an investigation. The administrator of the Civil Rights Division of BOLI has expressed BOLI's commitment to addressing OSHA's concerns. BOLI's investigations showed substantial improvement in FY 2004, when 21 of 23 cases reviewed contained "prima facie" analysis. BOLI takes appropriate action through administrative and court litigation on merit cases where the employer does not voluntarily comply with the state's proposed remedy. Therefore, OSHA concludes that Oregon's performance in this area is satisfactory.

(d) Restraint of Imminent Danger; Protection of Trade Secrets. A state plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The state has provisions concerning imminent danger and protection of trade secrets in its law, regulations, and operations manual which are at least as effective as the corresponding federal provisions. Oregon has authority to issue a red warning notice to prohibit the use of a machine, piece of equipment, or place of employment in imminent danger and other situations. Oregon responded to 59 imminent danger complaints during the evaluation period, 98% of the time within 24 hours. There were no Complaints About State Program Administration (CASPAs) filed concerning the protection of trade secrets during the report period.

(e) Right of Entry; Advance Notice. A state program must have a right to enter and inspect all covered workplaces, and a compulsory process to enforce those rights, such that its inspection authority is equivalent to that of Federal OSHA (Section 18(c)(3) of the Act and 29 CFR 1902.3(e)). In addition, the state is expected to prohibit advance notice of inspection, allowing exceptions thereto no broader than those provided for under the Federal program (29 CFR 1902.3(f)). Section 654.067 of the Oregon Safe Employment Act provides for an inspector's right to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. The Oregon law also prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal procedures.

In order to be found qualified for final approval, a state is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. During the evaluation period, there were 14 denials of entry. Entry was achieved in all cases, the same as for Federal OSHA during the period. During the evaluation period, no advance notice of inspections was given.

(f) Citations, Penalties, and Abatement. A state plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for issuing first-instance and other sanctions against employers found in violation of standards, and for promptly notifying employers of penalties (29 CFR 1902.4(c)(2)(x) and (xi)).

In order to be qualified for final approval, the state, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)). The state must issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), propose penalties for first-instance and other violations in a manner that is at least as effective as the Federal program (29 CFR 1902.37(b)(12)), and ensure the abatement of hazards (including via the issuance of failure-to-abate notices and appropriate penalties) (29 CFR 1902.37(b)(13)).

The Oregon plan, through its law, regulations, and operations manual, has established a system, similar to the Federal program, that provides for the prompt issuance of citations delineating violations and establishing reasonable abatement periods, requires the posting of such citations for employee information, and allows for the proposal of appropriate penalties. In addition to issuing citations, the state issues "Orders to Correct." The Order to Correct carries no penalty but requires abatement and may serve as the basis for repeated and failure-to-abate violations. Its use is limited and occurs primarily when a small construction employer who has failed to establish a required safety committee agrees to implement an "innovative" safety committee. It is also used to require the correction of safety and health hazards in the rare situation when a citation cannot be issued within 180 days and when legal

estoppel issues interfere with issuing a citation. Procedures for the Oregon occupational safety and health compliance program are set out in the Oregon Field Inspection Reference Manual, which has been determined to contain policies and procedures at least as effective as those in the Federal compliance manual.

The 18(e) Evaluation Report notes overall adherence by Oregon to its inspection procedures. Oregon cited an average of 2.9 violations per inspection. 40% of safety and 25% of health violations were cited as serious, willful, or repeat. The percentages of serious safety and health violations were lower than the comparable Federal percentages, but state officials assert that fewer serious violations per inspection are expected in Oregon because of a higher frequency of inspections, workplace safety committee (and employer safety and health program) requirements, and a large consultation program. No systemic problems relating to violation classification have been found. The state continues to provide compliance officers with specific training and direction to ensure that violations are properly classified. Oregon's lapse time from the opening conference to issuance of a citation averaged 38 days for safety and 74 days for health. Though the state's health citations lapse time was greater than the national average of 63 days, it dropped to 69 days by the middle of FY 2004.

Oregon's procedures for calculating penalties are different than OSHA's. The state uses lower base penalty amounts to calculate the probability/severity-based (gravity-based) penalty, applies different calculations to combined or grouped violations, and applies different calculations for penalty adjustment factors. Although these differences result in lower average penalties in Oregon ($365 for serious violations in FY 2003), no deficiencies in program operations attributable to these differences were noted.

Ninety-six percent (96%) of safety violations in Oregon had abatement periods of fewer than 30 days, and 97% of health violations had abatement periods of fewer than 60 days. This surpasses Federal performance.

Although an Oregon statute affords employers the right to withhold the results of voluntary safety and health self-audits conducted by private consultants, this self-audit privilege is very limited, has never been invoked by employers, and has had no negative impact on the state's ability to identify and cite violations. While OSHA and the U.S. Department of Labor believe that a self-audit privilege is inappropriate and unnecessary, such a policy in Oregon, as limited, does not present a sufficient basis for finding the state plan deficient or for withholding final approval status. *See* 69 FR 75446 (Dec. 16, 2004).

(g) Contested Cases. A state plan must have procedures for employers to contest citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must have an opportunity to participate as parties in proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Oregon's contest procedures and procedures for ensuring employees' participation rights are contained in the law, regulations, and operations manual that have been made a part of the record in this proceeding. The Oregon plan provides for the review of contested cases by the Workers' Compensation Board, an independent administrative board. Decisions of the Board may be appealed to the Oregon Court of Appeals. OR–OSHA had fewer violations vacated, fewer serious violations reclassified, and smaller penalty reductions after appeal than Federal OSHA during the same period.

Whenever appropriate, the state must seek administrative and judicial review of adverse adjudications. Additionally, the state must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. *See* 29 CFR 1902.37(b)(14). There was no OR–OSHA appellate level contested case activity during the evaluation period. OR–OSHA has had a number of appellate challenges in prior years, and has been successful in upholding basic employee rights (*e.g.*, complainant confidentiality and participation in inspections) as well as program authorities (*e.g.*, inspection targeting and expansion of inspection scope).

(h) Enforcement Conclusion. In summary, OSHA finds that enforcement operations provided under the Oregon plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) Public Employee Program. Section 18(c)(6) of the Act requires that a state with an approved plan maintain an effective and comprehensive safety and health program applicable to all employees of public agencies of the state and its political subdivisions. That program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a state's program for public employees be as effective as its program for private employees covered by the plan. The Oregon plan provides a program in the public sector which is comparable to the private sector program, including with respect to the assessment of penalties for serious violations. In Oregon, injury and illness rates in the public sector are comparable to private sector rates.

During the 18(e) evaluation period, the state conducted 4.9% of its total inspections in the public sector, and results were comparable to the private sector. Because Oregon's performance in the public sector is comparable to that in the private sector, OSHA concludes that the Oregon program meets the criteria in 29 CFR 1902.3(j).

(5) Staffing and Resources. Section 18(c)(4) of the Act requires state plans to provide the qualified personnel necessary for the enforcement of standards. *See also* 29 CFR 1902.3(h). In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the state has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The Oregon plan provides for 52 safety compliance officers and 28 industrial hygienists as set forth in the Oregon FY 2003 and FY 2004 grant applications. This staffing level exceeds the revised "fully effective" health and safety staffing benchmarks for Oregon of 47 safety compliance officers and meets the benchmark of 28 industrial hygienists approved by OSHA on August 11, 1994 (59 FR 42493, Aug. 18, 1994). At the close of the evaluation period, the state had 98% of safety and 96% of health compliance officer positions filled.

Oregon staff are trained by internally developed and conducted training sessions as well as by courses offered through the OSHA Training Institute. Development plans are created annually for each staff member to meet individual needs. In addition, the state develops a biennial training plan to provide a process through which major rule changes and shifts in technology can be addressed division-wide.

Because Oregon has allocated sufficient enforcement staff to meet the revised benchmarks, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1) and in the court order in *AFL–CIO* v. *Marshall* are being met by the Oregon plan.

Section 18(c)(5) of the Act requires that the state devote adequate funds to administration and enforcement of its standards. *See also* 29 CFR 1902.3(i). Oregon has consistently provided state matching funds well in excess of Federal funding. In the Fiscal Year 2005

initial grant award, the state has provided 72.6% of the total budget for its occupational safety and health program. Total initial funding for the state program in Fiscal Year 2005 is $18,604,237. ($5,105,000 Federal, $13,499,237 state).

As noted in the 18(e) Evaluation Report, Oregon's funding exceeds Federal requirements in absolute terms; moreover, the state allocates its resources to the various aspects of the program in an effective manner. On this basis, OSHA finds that Oregon has provided sufficient funding and resources for the various activities carried out under the plan.

(6) Records and Reports. State plans must assure that employers submit reports to the Secretary in the same manner as if the plan were not in effect (Section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurance that the designated agency will make reports to the Secretary in such form and containing such information as the Secretary may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Oregon employer recordkeeping requirements are identical to those of Federal OSHA (including all recent Federal revisions) with regard to the recording and reporting of injuries, illnesses and fatalities, although they differ in other areas. The state participates in the BLS Annual Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries. Oregon OSHA has elected not to participate in the OSHA Data Initiative, but has access to workers' compensation claims rates for employer-specific injury/illness information. The state participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Oregon has met the requirements of sections 18(c)(7) and (8) of the Act on employer and state reports to the Secretary.

(7) Voluntary Compliance. A state plan is required to undertake programs to encourage voluntary compliance by employers and employees (29 CFR 1902.4(c)(2)(xiii)). Oregon operates an on-site consultation program funded under Section 21(d) of the Act which is separate from its OSHA-approved state plan. This program provides consultation services to private sector employers focusing on small, high hazard employers. Two safety and two health positions are allocated for Oregon under this contract. During the evaluation period, Oregon's 21(d) consultants conducted 130 visits of which 93 were health consultations and 37 were safety consultations. These consultants played an important role in the implementation of a required employer recognition and exemption program by participating with state-funded consultants in 28 Safety and Health Achievement Recognition Program (SHARP) evaluation teams during the evaluation period.

Oregon provides additional consultative services to public and private employers with 19 safety and 13 health consultants that are 100% state-funded. (About 13% of OR–OSHA's annual consultations are conducted in the public sector.) This large state-funded consultation program does not make referrals to enforcement and does not require the posting of hazards and therefore the private sector aspect of this program is not considered part of the approved state plan. It is evaluated to assure that it does not have a negative impact on the mandated state program activities. The state believes that this program has added to the overall effectiveness of OR–OSHA and, to date, no negative impact on the Oregon State Plan has been identified.

OR–OSHA's Web site offers an extensive inventory of training opportunities: on-line registration for a large variety of workshop classes, on-line training modules for Hispanic workers and for loggers, classes jointly developed with labor and the construction industry, and on-line interactive courses. On-line compliance assistance resources include a Spanish-English Dictionary of Occupational Safety and Health Terms, technical publications in Spanish, training materials, and an ergonomics Web page. OR–OSHA also offers special assistance for small businesses, including "brown bag" safety and health program workshops and on-line resources. During FY 2003, 14,927 participants, including 6,286 from five targeted industries, attended OR–OSHA training sessions and conferences.

Oregon's employer recognition programs include Voluntary Protection Programs, with 7 certified sites, and its Safety and Health Achievement Recognition Program (SHARP), with 82 sites (and 84 additional employers working towards SHARP). OR–OSHA also has 20 partnerships, alliances and other cooperative agreements.

Accordingly, OSHA finds that Oregon has established and is administering an effective voluntary compliance program.

(8) Injury/Illness Rates. As a factor in its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and state measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the state program compare favorably with those under the Federal program. *See* 29 CFR 1902.37(b)(15). Although Oregon's injury/illness rates are somewhat higher than the national rates, they have declined steadily during the past decade, at a rate greater than the national experience. Oregon's lost workday case incidence rate declined from 5.6 in 1988 to 3.2 in 2001, while the national rate declined from 4.0 in 1989 to 2.8 in 2001. Oregon's lost workday case rate has declined by 43% while the national rate has declined by 30%. Oregon's lost workday case rate for the private sector remained at 3.2 for 2001 and 2002, slightly higher than the national rate of 2.8 for both years. Oregon's total case rate was also slightly higher than the national rate in both 2001 (6.2 vs. 5.7 national) and 2002 (6.0 vs. 5.3 national), but in 2003 moved closer to the national rate when Oregon's rate declined 6.7% (5.6 vs. 5.0 national). (Injury-illness data for 2002 and 2003 are not directly comparable to 2001 or prior years due to a change in OSHA's recordkeeping requirements.)

In construction, Oregon's lost workday case rate dropped from 4.3 in 1999 and 2000 to 3.8 in 2001, remaining below the national rate for all three years, but was slightly higher than the national rate in 2002 (4.0 Oregon vs. 3.8 national). In manufacturing, Oregon's lost workday case rate was 4.3 in 2001, slightly higher than the 4.1 national rate, while in 2002 Oregon's rate of 4.1 was identical to the national. Oregon's lost workday case rate for public sector employment was 2.9 in 2001 and 3.1 in 2002, still comparing favorably to its 3.2 private sector rate. Oregon's number of accepted disabling workers' compensation claims has also declined steadily over the past decade, from 31,530 in 1994 to 23,482 in 2002, and the accepted disabling claims rate declined from 1.7 in 1998 to 1.5 in 2002.

OSHA finds that during the evaluation period trends in worker injury and illness in Oregon were comparable to those in states with federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that, with the exception of the issue of temporary labor camps in agriculture, general industry, construction and logging, the Oregon State Plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation at least as effective as the Federal program and meets the statutory criteria for state plans in Section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Oregon State Plan, with the exception of temporary labor camps, is hereby granted final approval under Section 18(e) of the Act and implementing regulations at 29 CFR part 1902, effective May 12, 2005.

Under this 18(e) determination, Oregon will be expected to maintain a state program which will continue to be at least as effective as operations under the Federal program in protecting employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting state-initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Oregon must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for state compliance staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in Section 18(c) of the Act and 29 CFR part 1902 are being applied in actual operations under the Oregon plan terminates OSHA authority for federal enforcement of its standards in Oregon with respect to those issues covered under the state plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging). Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17 * * * shall not apply with respect to any occupational safety and health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, with the exception of temporary labor camps, Federal authority over worksites covered by the Oregon State Plan is relinquished, as of the effective date of this determination, with respect to the issuance of citations for violations of OSHA standards (Sections 5(a)(2) and 9); the conduct of inspections (except those necessary to conduct evaluations of the plan under Section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (Section 8); the conduct of enforcement proceedings in contested cases (Section 10); proceedings to correct imminent dangers (Section 13); and the proposal of civil penalties and the initiation of criminal proceedings for violations of the Act (Section 17). Because this 18(e) determination does not cover temporary labor camps, this action will not result in any change to present Federal enforcement authority at those sites.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary retains authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be initially referred to the state for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remain under Federal jurisdiction. The Assistant Secretary also retains authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in states which have received an affirmative 18(e) determination. In the event that a state's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be federally enforceable in the state.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority with regard to occupational safety and health issues covered by the Oregon plan (except for temporary labor camps), but OSHA retains full authority over issues which are not subject to state enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders, as applicable to the safety or health of employees in private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals. These employers remain subject to Federal OSHA jurisdiction. In addition, Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the state is unable to provide effective coverage for reasons which OSHA determines are not related to the required performance or structure of the state plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the state is carrying out its plan. Section 18(f) and regulations at 29 CFR part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the state has subsequently failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary may initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if the Assistant Secretary's evaluations show that the state has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the state does not submit program change supplements to the Assistant Secretary as required by 29 CFR part 1953. *See* 29 CFR 1902.43(a)(4).

Explanation of Changes to 29 CFR Part 1952

29 CFR part 1952 contains, for each state having an approved plan, a Subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to part 1952 reflecting the final approval decision. This notice makes changes to subpart D of part 1952 to reflect the final approval of the Oregon plan.

The table of contents for part 1952, subpart D, has been revised to reflect the following changes:

A new Section 1952.104, Final approval determination, which formerly was reserved, has been added to reflect the determination granting final approval of the plan. This section contains a more accurate description of the current scope of the plan than the

one contained in the initial approval decision.

Section 1952.105, Level of Federal enforcement, has been revised to reflect the state's 18(e) status. This replaces the former description of the relationship of state and Federal enforcement under an Operational Status Agreement voluntarily suspending Federal enforcement authority, which was entered into on January 23, 1975. Section 1952.105 describes the issues over which Federal authority has been terminated, and the issues for which it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Oregon under any new or different requirements, nor would any additional burden be placed upon the state government beyond the responsibilities already assumed as part of the approved plan.

Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), emphasizes consultation between Federal agencies and the states and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has included in the Supplementary Information section of today's final approval decision a detailed explanation of the relationship between Federal OSHA and the state plan states under the Occupational Safety and Health Act. Although it appears that the specific consultation procedures provided in section 6 of Executive Order 13132 are not mandatory for final approval decisions under the Act because they neither impose a burden upon the state nor involve preemption of any state law, OSHA has nonetheless consulted extensively with Oregon throughout the period of 18(e) evaluation. OSHA has reviewed the Oregon final approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; and Secretary of Labor's Order No. 5–2002 (67 FR 65008, Oct. 22, 2002).

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 2nd day of May, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

■ Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

■ 1. The authority citation of part 1952 is revised to read as follows:

Authority: Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Subpart D—Oregon

■ 2. A new § 1952.104 is added to read as follows:

§ 1952.104 Final approval determination.

(a) In accordance with Section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the state met the "fully effective" compliance staffing benchmarks as revised in 1994 in response to a court order of the United States District Court for the District of Columbia in *AFL–CIO* v. *Marshall*, (C.A. No. 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-state Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Oregon State Plan for a period of at least one year following certification of completion of developmental steps. Based on an 18(e) Evaluation Report covering the period October 1, 2002 through September 30, 2003, and after opportunity for public comment, the Assistant Secretary determined that, in operation, Oregon's occupational safety and health program (with the exception of temporary labor camps in agriculture, general industry, construction and logging) is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final state plan approval in Section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, under Section 18(e) of the Act, the Oregon State Plan was granted final approval and concurrent Federal enforcement authority was relinquished for all worksites covered by the plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging), effective May 12, 2005.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Oregon. The plan does not cover private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

(c) Oregon is required to maintain a state program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for state staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

■ 3. Section 1952.105 is revised to read as follows:

§ 1952.105 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Oregon State Plan under Section 18(e) of the Act, effective May 12, 2005, occupational safety and health standards which have been promulgated under Section 6 of the Act (with the exception of those applicable to temporary labor camps in agriculture, general industry, construction and logging) do not apply with respect to issues covered under the Oregon plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under Sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under Section 8 (except those necessary to evaluate the plan under Section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by Section 18(e)); to conduct enforcement proceedings in contested cases under Section 10; to institute proceedings to correct imminent dangers under Section 13; and to propose civil penalties or initiate criminal proceedings for violations of

the Act under Section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under Section 9 or 10 before the effective date of the 18(e) determination. The Operational Status Agreement, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, is superseded by this action, except that it will continue to apply to temporary labor camps in agriculture, general industry, construction and logging.

(b)(1) In accordance with Section 18(e), final approval relinquishes Federal OSHA authority with regard to occupational safety and health issues covered by the Oregon plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging). OSHA retains full authority over issues which are not subject to state enforcement under the plan. Thus, Federal OSHA retains its authority relative to:

(i) Standards in the maritime issues covered by 29 CFR parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan. This includes: Employment on the navigable waters of the U.S.; shipyard and boatyard employment on or immediately adjacent to the navigable waters—including floating vessels, dry docks, graving docks and marine railways—from the front gate of the work site to the U.S. statutory limits; longshoring, marine terminal and marine grain terminal operations, except production or manufacturing areas and their storage facilities; construction activities emanating from or on floating vessels on the navigable waters of the U.S.; commercial diving originating from an object afloat a navigable waterway; and all other private sector places of employment on or adjacent to navigable waters whenever the activity occurs on or from the water;

(ii) Enforcement of occupational safety and health standards at all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundaries of all Indian reservations, including the Warm Springs and Umatilla reservations, and on lands outside these reservations that are held in trust by the Federal government for these tribes. (Businesses owned by Indians or Indian tribes that conduct work activities outside the tribal reservation or trust lands are subject to the same jurisdiction as non-Indian owned businesses.);

(iii) Enforcement of occupational safety and health standards at worksites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects, including reconstruction of docks or other appurtenances;

(iv) Enforcement of occupational safety and health standards with regard to all Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the state is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the state plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and state authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the state designated agency.

(c) Federal authority under provisions of the Act not listed in Section 18(e) is unaffected by final approval of the Oregon State Plan. Thus, for example, the Assistant Secretary retains authority under Section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the state for investigation. The Assistant Secretary also retains authority under Section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in states which have received an affirmative 18(e) determination, although such standards may not be federally applied. In the event that the state's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be federally enforceable in that state.

(d) As required by Section 18(f) of the Act, OSHA will continue to monitor the operations of the Oregon state program to assure that the provisions of the state plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the state to comply with its obligations may result in the suspension or revocation of the final approval determination under Section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[FR Doc. 05–9321 Filed 5–11–05; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–013]

RIN 1625–AA00

Safety Zones; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish 34 permanent safety zones for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

DATES: This rule is effective June 13, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–013 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, Room 119, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 31, 2005, we published a notice of proposed rulemaking (NPRM)

entitled Safety Zones; Fireworks Displays Within the Fifth Coast Guard District in the **Federal Register** (70 FR 16463). We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard will establish 34 permanent safety zones that will be enforced for fireworks displays occurring throughout the year that are held on an annual basis and normally held in one of 34 locations. The 34 locations are: Patuxent River Solomons Island, MD; Middle River, MD; Northeast River, MD; Potomac River, Charles County, MD; Baltimore Inner Harbor, Patapsco River, MD; Northwest Harbor (Western Section), Patapsco River, MD; Northwest Harbor (East Channel), Patapsco River, MD; Washington Channel, Upper Potomac River, Washington, DC; Dukeharts Channel, Potomac River, Coltons Point, MD; Severn River and Spa Creek, Annapolis, MD; Miles River, St. Michaels, MD; Chesapeake Bay, Chesapeake Beach, MD; Choptank River, Cambridge, MD; Chester River, Kent Island Narrows, MD; Atlantic Ocean, Ocean City, MD; Isle of Wight Bay, MD; Assawoman Bay, Fenwick Island, MD; Atlantic Ocean, Rehoboth Beach, DE; Indian River Bay, DE; Little Egg Harbor, NJ; Barnegat Bay, NJ; Delaware Bay, North Cape May, NJ; Delaware River, Philadelphia, PA; Morehead City Harbor Channel, Morehead City, NC; Green Creek and Smith Creek, Oriental, NC; Pamlico River, Washington, NC; Neuse River, New Bern, NC; Cape Fear River, Southport, NC; Cape Fear River, Wilmington, NC; Upper Potomac River, Alexandria, VA; Potomac River, Prince William County, VA; Chincoteague Channel, Chincoteague, VA; Atlantic Ocean, Virginia Beach, VA; and Elizabeth River, Southern Branch, Norfolk, VA. The Coast Guard received over 50 applications in these areas between January 2004 and January 2005. Previously a temporary safety zone was typically established on an emergency basis for each display.

Each year organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene will allow persons within the safety zone if conditions permit. The Coast Guard will publish notices in the **Federal Register** if an event sponsor reported a change to the listed event venue or date. Coast Guard Captains of the Port will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. Fireworks barges or launch sites on land used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone is or will be enforced on that day. This notice will consist of a diamond shaped sign 4 foot by 4 foot with a 3-inch orange retro-reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these safety zones is from 5:30 p.m. (e.s.t.) to 1 a.m. (e.s.t.). However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

This rule is to provide for the safety of life on navigable waters during the event.

Discussion of Comments and Changes

One letter was received commenting on this rule. The comments in the letter indicated that the costs of the signs that provide on scene notice with the words "FIREWORKS" "DANGER" "STAY AWAY" would be prohibitive to fireworks production companies. Additionally, the comments indicated that the fireworks signs would bring undue attention to the presence of explosives in a particular area. The Coast Guard considers the cost associated to comply with this regulation fair and reasonable to ensure a safe event. The cost estimate provided in the comments significantly overstated the actual cost of signage required by this rule. The signs required by this rule will be posted only on the days this rule is enforced, which will not cause undue attention to the presence of explosives in the area. This rule's objective is to provide mariners on scene notice and clearly establish safety zones by using highly visible signs to ensure boating traffic stays well clear of designated fireworks fall out areas. No change was made to this regulation as a result of the comments received.

Regulatory Evaluation

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

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

This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the safety zones. Advance notifications would also be made to the local maritime community by issuing Local Notice to Mariners. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that these safety zones will only be enforced 2 to 3 times per year.

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 rule will effect the following entities some of which may be small

entities: The owners and operators of vessels intending to transit or anchor in the safety zones during the times these zones are enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement period will be short in duration and in many of the zones vessels can transit safely around the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we 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 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule 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 would 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish 34 safety zones.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L.

107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.506 to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

(a) *Locations. (1) Patuxent River, Solomons Island, MD, Safety Zone.* All waters of Patuxent River within a 300 yard radius of the fireworks barge in an area bound by the following points: 38°19′42″ N, 076°28′02″ W; thence to 38°19′26″ N, 076°28′18″ W; thence to 38°18′48″ N, 076°27′42″ W; thence to 38°19′06″ N 076°27′25″ W; (Datum NAD 1983), thence to the point of origin, located near Solomons Island, MD.

(2) Middle River, Baltimore County, MD, Safety Zone. All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position 39°17′45″ N, 076°23′49″ W (Datum NAD 1983), approximately 300 yards east of Rockaway Beach, near Turkey Point.

(3) Northeast River, North East, MD, Safety Zone. All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position 39°35′26″ N, 075°57′00″ W (Datum NAD 1983), approximately 400 yards south of North East Community Park.

(4) Potomac River, Charles County, MD, Safety Zone. All waters of the Potomac River within a 250 yard radius of the fireworks barge in approximate position 38°20′30″ N, 077°14′30″ W (Datum NAD 1983), located near Fairview Beach, Virginia.

(5) Baltimore Inner Harbor, Patapsco River, MD, Safety Zone. All waters of the Patapsco River within a 150 yard radius of the fireworks barge in approximate position 39°16′55″ N, 076°36′17″ W (Datum NAD 1983), located at the entrance to Baltimore Inner Harbor, approximately 150 yards southwest of pier 6.

(6) Northwest Harbor, (Western Section) Patapsco River, MD, Safety Zone. All waters of the Patapsco River within a 250 yard radius of the fireworks barge in approximate position 39°16′37″ N, 076°35′54″ W (Datum NAD 1983), located near the western end of Northwest Harbor.

(7) Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone. All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′35″ W (Datum NAD 1983), located adjacent to the East Channel of Northwest Harbor.

(8) Washington Channel, Upper Potomac River, Washington, DC, Safety Zone. All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position 38°52′09″ N, 077°01′13″ W (Datum NAD 1983), located within the Washington Channel in Washington Harbor, DC.

(9) Dukeharts Channel, Potomac River, MD, Safety Zone. All waters of the Potomac River within a 150 yard radius of the fireworks barge in approximate position 38°1348″ N, 076°44′37″ W (Datum NAD 1983), located adjacent to Dukeharts Channel near Coltons Point, Maryland.

(10) Severn River and Spa Creek, Annapolis, MD, Safety Zone. All waters of the Severn River and Spa Creek within an area bounded by a line drawn from 38°58′39.6″ N, 076°28′49″ W; thence to 38°58′41″ N, 076°28′14″ W; thence to 38°59′01″ N, 076°28′37″ W; thence to 38°58′57″ N, 076°28′40″ W (Datum NAD 1983), located near the entrance to Spa Creek in Annapolis, Maryland.

(11) Miles River, St. Michaels, MD, Safety Zone. All waters of the Miles River within a 200 yard radius of the fireworks barge in approximate position 38°47′42″ N, 076°12′23″ W (Datum NAD 1983), located near the waterfront of St. Michaels, Maryland.

(12) Chesapeake Bay, Chesapeake Beach, MD, Safety Zone. All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position 38°41′33″ N, 076°31′48″ W (Datum NAD 1983), located near Chesapeake Beach, Maryland.

(13) Choptank River, Cambridge, MD, Safety Zone. All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at 38°35′06″ N, 076°04′46″ W (Datum NAD 1983).

(14) Chester River, Kent Island Narrows, MD, Safety Zone. All waters of the Chester River within a 250 yard radius of the fireworks barge in approximate position 38°58′51.6″ N, 076°14′49.8″ W (Datum NAD 1983), approximately 500 yards west of the northern approach to Kent Island Narrows channel.

(15) Atlantic Ocean, Ocean City, MD, Safety Zone. All waters of the Atlantic Ocean in an area bound by the following points: 38°19′39.9″ N, 075°05′03.2″ W; thence to 38°19′36.7″ N, 075°04′53.5″ W; thence to 38°19′45.6″ N, 075°04′49.3″ W; thence to 38°19′49.1″ N, 075°05′00.5″ W; (Datum NAD 1983), thence to point of origin. The size of the proposed zone extends approximately 300 yards offshore from the fireworks launch area located at the High Water mark on the beach.

(16) Isle of Wight Bay, Ocean City, MD, Safety Zone. All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position 38°22′32″ N, 075°04′30″ W (Datum NAD 1983).

(17) Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone. All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position 38°25′57.6″ N, 075°03′55.8″ W (Datum NAD 1983).

(18) Atlantic Ocean, Rehoboth Beach, DE, Safety Zone. All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position 38°43′01.2″ N, 075°04′21″ W (Datum NAD 1983), approximately 400 yards east of Rehoboth Beach, DE.

(19) Indian River Bay, DE, Safety Zone. All waters of the Indian River Bay within a 360 yard radius of the fireworks launch location on the pier in approximate position 38°36′42″ N, 075°08′18″ W (Datum NAD 1983), about 700 yards east of Pots Net Point, DE.

(20) Little Egg Harbor, Parker Island, NJ, Safety Zone. All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position 39°34′18″ N, 074°14′43″ W (Datum NAD 1983), approximately 100 yards north of Parkers Island.

(21) Barnegat Bay, Ocean Township, NJ, Safety Zone. All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position 39°47′33″ N, 074°10′46″ W (Datum NAD 1983).

(22) Delaware Bay, North Cape May, NJ, Safety Zone. All waters of the Delaware Bay within a 500 yard radius of the fireworks barge in approximate position 38°58′00″ N, 074°58′30″ W (Datum NAD 1983).

(23) Delaware River, Philadelphia, PA, Safety Zone. All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at 39°56′31.2″ N, 075°08′28.1″ W; thence to 39°56′29.1″ N, 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge, (Datum NAD 1983).

(24) Morehead City Harbor Channel, NC, Safety Zone. All waters of Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N, 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC.

(25) Cape Fear River, Wilmington, NC, Safety Zone. All waters of the Cape Fear River within an area bound by a line drawn from the following points: 34°14′12″ N, 077°57′07.2″ W; thence to 34°14′12″ N, 077°57′06″ W; thence to 34°13′54″ N, 077°57′00″ W;, thence to 34°13′54″ N, 077°57′06″ W; thence to

the point of origin, (Datum NAD 1983), located 500 yards north of Cape Fear Memorial Bridge.

(26) Cape Fear River, Southport, NC, Safety Zone. All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position 33°54′40″ N, 078°01′18″ W (Datum NAD 1983), approximately 700 yards south of the waterfront at Southport, NC.

(27) Green Creek and Smith Creek, Oriental, NC, Safety Zone. All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at 35°01′29.6″ N, 076°42′10.4″ W (Datum NAD 1983), located near the entrance to the Neuse River in the vicinity of Oriental, NC.

(28) Pamlico River, Washington, NC, Safety Zone. All waters of the Pamlico River that fall within a 300 yard radius of the fireworks launch site at 35°32′19″ N, 077°03′20.5″ W (Datum NAD 1983), located 500 yards north of Washington railroad trestle bridge.

(29) Neuse River, New Bern, NC, Safety Zone. All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position 35°06′07.1″ N, 077°01′35.8″ W (Datum NAD 1983), located 420 yards north of the New Bern, Twin Span, high rise bridge.

(30) Upper Potomac River, Alexandria, VA, Safety Zone. All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′37″ N, 077°02′02″ W (Datum NAD 1983), located near the waterfront of Alexandria, Virginia.

(31) Potomac River, Prince William County, VA, Safety Zone. All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position 38°34′08″ N, 077°15′34″ W (Datum NAD 1983), located near Cherry Hill, Virginia.

(32) Chincoteague Channel, Chincoteague, VA, Safety Zone. All waters of the Chincoteague Channel within a 360 yard radius of the fireworks launch location at the Chincoteague carnival waterfront in approximate position 37°55′40.3″ N, 075°23′10.7″ W (Datum NAD 1983), approximately 900 yards southwest of Chincoteague Swing Bridge.

(33) Atlantic Ocean, Virginia Beach, VA, Safety Zone. All waters of the Atlantic Ocean enclosed within a 360 yard radius of the center located on the beach at approximate position 36°51′34.8″ N, 075°58′30″ W (Datum NAD 1983).

(34) Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone: All waters of Elizabeth River Southern Branch in an area bound by the following points: 36°50′54.8″ N, 076°18′10.7″ W; thence to 36°51′7.9″ N, 076°18′01″ W; thence to 36°50′45.6″ N, 076°17′44.2″ W; thence to 36°50′29.6″ N, 076°17′23.2″ W; thence to 36°50′7.7″ N, 076°17′32.3″ W; thence to 36°49′58″ N, 076°17′28.6″ W; thence to 36°49′52.6″ N, 076°17′43.8″ W; thence to 36°50′27.2″ N, 076°17′45.3″ W thence to the point of origin,(Datum NAD 1983).

(b) *Notification.* (1) Fireworks barges and launch sites on land in paragraph (a) of this section shall have a sign on the port and starboard side of the barge or mounted on a post 3 foot above ground level when on land and facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 foot by 4 foot with a 3-inch orange retro-reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(c) *Enforcement Period.* The safety zones in paragraph (a) of this section will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a "FIREWORKS—DANGER—STAY AWAY" sign on the port and starboard side is on-scene or a "FIREWORKS—DANGER—STAY AWAY" sign is posted on land, in a location listed in paragraph (a) of this section. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. Those personnel are compromised of commissioned, warrant, and petty officers of the Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by the U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(e) *Definitions.*

Captain of the Port means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

State or local law enforcement officers mean any State or local government law enforcement officer who has the authority to enforce State criminal laws.

Dated: May 3, 2005.

Lawrence J. Bowling,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–9436 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–DC–0007; FRL–7909–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; VOC Emission Standards for AIM Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District). This revision pertains to the volatile organic compound (VOC) emission standards for architectural and industrial maintenance (AIM) coatings in the District. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

DATES: *Effective Date:* This final rule is effective on June 13, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0007. All documents in the docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the state submittal at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 27, 2004 (69 FR 77149), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. The NPR proposed approval of the VOC emission standards for AIM coatings. The formal SIP revision was submitted by the District on April 16, 2004 and supplemented on September 20 and November 26, 2004. Other specific requirements of the District's SIP revision for AIM coatings and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA received adverse comments on the December 27, 2004 NPR. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the District's AIM coatings rule. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with the District and manufacturers to explore ways to ensure that the rule achieves the intended VOC emission reductions, and to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule.

II. Public Comments and EPA Responses

A private citizen and the Sherwin Williams Company (SWC) submitted adverse comments on EPA's December 27, 2004 (69 FR 77149) proposed approval of the District's AIM coatings rule The SWC submitted its adverse comments in letter to EPA dated January 26, 2005. The SWC's comment letter also includes, by reference, the comments it previously submitted to the District on its proposed version of the AIM coatings rule during the District's adoption process and to the Ozone Transport Commission (OTC) in a letter dated January 11, 2001.[1] Lastly, the SWC's January 26, 2005 letter of comment to EPA also includes, by reference, the Petition for Reconsideration and Request for Stay, 42 U.S.C.A. Subsection 7607(d)(7)(B): Environmental Protection Agency's Approval and Promulgation of Air Quality Improvement Plans; Pennsylvania; Control of Volatile Organic Compound Emissions from AIM Coatings submitted by the SWC to EPA on January 20, 2005 (hereafter the Petition for Reconsideration).[2] The following summarizes the comments submitted to EPA on the December 27, 2004 (69 FR 77149) proposed approval of the District's AIM coatings rule and EPA's response to those comments.

A. *Comment: The Products Should Contain No VOCs*—A private citizen submitted a comment to EPA by e-mail on December 27, 2005. The commenter states that no VOCs, zero emissions and zero pollution should be allowed from any product allowed to be used or sold.

Response: EPA disagrees with this comment. Aside from issues associated with the technological infeasibility of all paints and coatings used or sold to contain no VOCs, it is important to understand EPA's role with regard to review and approval or disapproval of rules submitted by states as SIP revisions. EPA can only take action upon the final adopted version of a state's regulation as submitted by that state in its SIP revision request. It is not within EPA's authority, by its rulemaking on the SIP revision or otherwise, to change or modify the text or substantive requirements of a state regulation. Therefore, EPA cannot modify the District's AIM regulation as recommended in the comment.

B. *Comment: Using Flawed Data Violates the Data Quality Objectives Act and Administrative Procedures Act*— The commenter asserts that the District's AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act ("DQOA") (Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)). The data at issue is contained in what the commenter characterizes as a "study prepared by E.H. Pechan & Associates" (Pechan Study) in 2001. The alleged flaws relate to projected VOC emissions reductions calculated in the Pechan Study. The commenter asserts that certain of the underlying data and data analyses are allegedly "unreproduceable." Further, the commenter asserts that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to the Federal AIM coatings rule, than was calculated in the Pechan Study (54 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenter states that EPA must not approve the proposed District's AIM coatings rule as a revision to the SIP.[3] These same issues are also raised in the commenter's Petition for Reconsideration.

Response: EPA disagrees with this comment. What the commenter characterizes as the Pechan Study is not at issue in this rulemaking. The Pechan Study was not submitted to EPA by the District in its SIP revision requesting that EPA approve its AIM coatings rule.[4]

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[1] The SWC's January 26, 2005 letter of comment to EPA states that it is also includes, by reference, the comments submitted to the OTC, enclosed as Exhibit B., and asks that they also be treated as direct comments on the proposed revision to the DC SIP. However, Exhibit B. to the SWC's January 26, 2005 letter of comment to EPA is a "Petition for Reconsideration and Request for Stay, 42 U.S.C.A. Subsection 7607(d)(7)(B); Environmental Protection Agency's Approval and Promulgation of Air Quality Improvement Plans; Pennsylvania; Control of Volatile Organic Compound Emissions from AIM Coatings submitted to EPA by the SWC to EPA on January 20, 2005."

The SWC's January 11, 2001 letter of comment to the OTC is enclosed as attachment 4 to Exhibit A of SWC's January 26, 2005 letter of comment to EPA on the December 27, 2004 (69 FR 77149) proposed approval of the District's AIM coatings rule.

[2] This Petition for Reconsideration, as it pertains to EPA's approval of Pennsylvania's AIM coatings rule (69 FR 68080), was withdrawn by a letter dated March 17, 2005.

[3] The SWC submitted a "Request for Correction of Information" (RFC) dated June 2, 2004, to EPA's Information Quality Guidelines Office in Washington, DC which raises substantively similar issues to those raised by this comment. By letter dated February 25, 2005 from Robert Brenner, Principal Deputy Assistant Administrator to the Counsel for Sherwin Williams Company, EPA responded separately to the RFC. A copy of that letter is included in the administrative record for this final rulemaking.

[4] The SWC concedes that the Pechan Study and related spreadsheet are not part of the record submitted to EPA by the District. The SWC assert, however, that there are references to the Pechan Study in other materials submitted by the District. Whether or not the Pechan Study, or data from that study, was submitted to EPA does not alter our analyses or conclusion, described herein, that the Pechan Study is not relevant in this rulemaking. Consequently, because the Pechan Study is not relevant to this rulemaking, the commenter's reliance on the document entitled, "A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information," EPA 100/B–03–001 (June 2003), provided as exhibit C to SWC's comments is misplaced. This

The validity of the Pechan Study data is not at issue in this rulemaking because the District did not request approval of a quantified amount of VOC emission reduction from the enactment of its regulation. Rather, this AIM coatings regulation has been submitted by the District, and is being approved by EPA, on the basis that it strengthens the existing District SIP. The commenter does not dispute that the District's AIM coatings rule will, in fact, reduce VOC emissions.

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs for each designated "air quality control region" within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and *must approve* the SIP revision if it is found to meet the minimum requirements of the Act. *See* section 110(k)(3) of the Act, 42 U.S.C. 7410(k)(3); *see also Union Elec. Co.* v. *EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. *See* section 116 of the Act, 42 U.S.C. 7416. EPA must disapprove state plans, and revisions thereto, that are less stringent than a standard or limitation provided by Federal law. *See* section 110(k) of the Act, 42 U.S.C. 7410(k); *see also Duquesne Light* v. *EPA*, 166 F.3d 609 (3d Cir. 1999). The Pechan Study is not part of the District's submission in support of its AIM coatings rule. Because the District's April 16, 2004 submission (supplemented on September 20 and November 26, 2004) does not seek approval of a specific amount of emissions reductions, the level of emissions reductions that might be calculable using data contained in the Pechan Study is irrelevant to whether EPA should approve this SIP revision.[5] The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that the District's AIM coatings rule be at least as stringent as the otherwise applicable Federal AIM coatings rule set forth at 40 CFR 59.400, subpart D.[6]

EPA has concluded that the District's AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenter's conclusion that the District AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenter, *i.e.*, that the commenter's "better" data demonstrates that OTC Model AIM coatings rule achieves a 54 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule. Rather, EPA has determined that the District's AIM coatings rule is, on its face, more stringent than the Federal AIM coatings rule. Examples of categories for which the District's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule's VOC content limit for non-flat high gloss coatings is 380 grams/liter while the District's AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the District's AIM coatings rule's is 400 grams/liter. Examples of categories for which the District's AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for antenna coatings and low-solids coatings. In both rules the VOC content limits for these categories are 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, the District's AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule.

C. *Comment:* EPA's Determination That the District of Columbia AIM Coatings Rule Is as Least as Stringent as the Federal AIM Coatings Rule Is Inadequate—EPA determined that the District's AIM coating rule is as stringent, or more stringent, than the otherwise applicable Federal AIM coatings rule because the VOC content limit of each product category of the District's AIM coatings rule is equal to or below the VOC content limit of the Federal AIM coatings rule. The commenter claims that EPA's determination is inadequate for at least three reasons: (i) EPA's comparison of VOC content fails to include an "ozone impact analysis;" (ii) EPA acknowledged that the stringent VOC content limits of the rule might result in "behavioral changes;" and (iii) EPA failed to consider that more stringent VOC content limits might result in more use of products, or use of products with VOCs of higher reactivity, and that this would make the District's AIM coatings rule less stringent in terms of ozone impacts. The commenter raised these arguments in a Petition for Reconsideration concerning EPA's approval of the comparable Pennsylvania AIM coatings rule, asserting that EPA's "on its face" stringency finding is insufficient to meet the requirements of the CAA and that EPA's reliance on *Union Elec. Co.* v. *EPA*, 427 U.S. 246 (1976) to support its approval of the rule was misplaced. As noted previously, SWC has incorporated this Petition for Reconsideration in its comments opposing approval of the District's AIM coatings rule.

Response: EPA disagrees that these comments provide a basis for disapproval of the District's AIM coating rule as a SIP revision. First, with respect to the comparison of the stringency of the District AIM coatings rule and the Federal AIM coatings rule, EPA believes that the VOC content levels of the respective rule for each category is the appropriate basis of comparison. The current Federal AIM coatings rule

"Assessment Factors" document describes the considerations EPA takes into account in evaluating scientific or technical information "used in support of Agency actions." *Assessment Factors*, p.1. The Pechan Study is not being used in support of this rulemaking, therefore, EPA is under no obligation to evaluate the scientific or technical information in that study.

[5] After submission of a request for approval of a quantified amount of emissions reductions credit due to the AIM coatings rule by the District, EPA will evaluate the credit attributable to the rule. Whatever methodology and data the District uses in such a request, the issue of proper credit will become ripe for public comment.

[6] The commenter asserts that "it makes no difference whether the District is asking for credits at this time for there to be a Data Quality Act challenge," apparently because the fact that material from the Pechan Study appears in the rulemaking docket for this action, there is "dissemination of flawed data." This ignores that fact that EPA is taking no stance on the Pechan Study and its underlying data. That study is irrelevant to our analysis as to whether the District's AIM rule is approvable as a measure meeting the requirements of section 110 of the Act that strengthens the District's SIP. EPA is not required to address irrelevant material merely because it is in the rulemaking docket. Section 307(d)(6)(B) of the CAA (which applies to, among other things, SIP revisions, *see* 42 U.S.C. 7607(d)(1)(B)), requires EPA to respond to "each of the significant comments, criticisms, and new data submitted * * * during the public comment period." 42 U.S.C. 7607(d)(6)(B). The United States Supreme Court has held that "irrelevant" matter in the docket is not "significant" as that term is used in the CAA, and EPA has no duty to respond to them. *See Whitman* v. *Amer. Trucking Ass'ns., Inc.*, 531 U.S. 457, n. 2 at 470 (2001). With respect to the Pechan data, we are not disseminating it, but we rather are fulfilling our statutory role as custodian of a docket containing irrelevant material submitted by third parties.

achieves reductions of VOC content for each individual coating category, and an aggregate amount of VOC content for all of the categories covered by the rule. These mass-based VOC content limits apply to each category of product and, based upon an analysis of the types of products used and the amount of products used in a given area, are estimated to result in a given amount of mass based VOC emission reductions. As we have previously noted in this rulemaking, the District did not request approval of a quantified amount of VOC emission reduction from the enactment of its regulation; the ozone impacts of the VOC reductions from the District's AIM coatings rule will be determined at a subsequent point in time. Even though the specific amount of VOC emission reduction credit attributable to the District's AIM coatings rule is not at issue in EPA's approval of the rule into the SIP in this rulemaking, EPA believes that the category-by-category comparison of VOC content between the Federal AIM coatings rule and the District's coating rule is a reasonable way to assess whether the latter is at least as stringent as the former. The commenter did not dispute that the District's AIM coatings rule is overall more stringent than the Federal AIM coatings rule in terms of its tighter VOC limits, and in fact states in its comments that it believes that the OTC model AIM coatings rule will achieve a 54 percent VOC emissions reduction relative to the Federal AIM coatings rule.

Second, with respect to what the commenter refers to as "behavioral changes," EPA did note in its approval of comparable State AIM coatings rules in Pennsylvania and New York (and reiterates in today's action) that it had concerns with respect to some of the product categories that: "if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products, thereby circumventing the rule's intended VOC emission reductions." EPA further stated that it would address these types of concerns when evaluating credit for VOC emission reductions. The commenters appear to suggest that because product users might engage in "behavioral changes" such as adding solvent to products, which would be illegal under the District's AIM coatings rule, EPA cannot consider the District's AIM coatings rule to be at least as stringent as the Federal AIM coatings rule. To the contrary, EPA believes that the potential for illegal behavior should not be a basis for concluding that the District's AIM coatings rule is not as stringent as the Federal AIM coatings rule, and accordingly should not be a basis for disapproving the SIP revision. EPA appropriately assumes, for purposes of approving such a rule, that manufacturers, distributors, and users will abide by the law, or that the District or EPA will ultimately insure that they do. EPA reiterates, however, that the specific amount of credit attributable to the rule is not at issue in this action, and EPA concludes that the mere potential for illegal behavior is not a basis for determining that the District's AIM coatings rule is not as stringent as the Federal AIM coatings rule.

Third, concerning the possibility that more stringent limits will result in more frequent painting, or painting with products that contain more highly reactive VOCs, EPA notes that the commenter already raised these issues with the District and the District ascertained that such concerns did not outweigh the overall benefits of the rule in the area. Similarly, EPA believes that these concerns are not a basis for determining that the District's AIM coatings rule is not at least as stringent as the Federal AIM coatings rule as a whole. At the outset, it must be noted that the District did not elect to develop and submit to EPA an AIM coatings rule based upon VOC relative reactivity, as the commenter implicitly suggests the District should have. EPA must act on the AIM coatings rule submitted by the District, not on one that the commenters would have preferred. Were the District to have submitted such an AIM coatings rule, EPA agrees with the commenter that the District would have needed to establish that the limits it imposed are in fact more stringent than those otherwise required by the Federal AIM coatings rule. In addition, EPA notes that as a general matter EPA believes that its approval of such a rule could not be inconsistent with the requirements of section 110(l) and section 193 of the CAA, as applicable. A determination of consistency with those statutory provisions would be made in the context of approval of a specific rule based upon relative reactivity. Because neither the District's AIM coatings rule nor the Federal AIM coatings rule is premised upon VOC relative reactivity, it is neither possible nor required that EPA compare the relative stringency of the rules on this basis in this rulemaking.

In criticizing the District's AIM coatings rule, the commenter has hypothesized that users will necessarily use more product, or that manufacturers will necessarily choose to use more reactive VOCs to meet a more stringent limit, at least with respect to one specific category of product (the commenter alleges that an applicator would have to use 50 percent more of the compliant waterborne clear wood finish to achieve the dry film thickness equivalent to current, federally compliant solvent-based varnish). EPA believes that the commenter's assertions are speculative in nature and do not provide compelling evidence that the District's AIM coatings rule is not at least as stringent as the otherwise applicable Federal AIM coatings rule. EPA believes that it would be arbitrary and capricious to disapprove the District's AIM coatings rule based on the speculative behavior of the persons who will apply the coatings (*e.g.*, that the applicators necessarily will use more of a product or will necessarily violate the law by adulterating a complying product).[7] This is especially so when the regulation at issue is both facially more stringent and conceded by the commenter to be more stringent overall (*i.e.*, will result in greater VOC emissions reductions), than the otherwise applicable Federal AIM coatings rule, and any supposed increase in ozone from tighter VOC content limits is confined to one, or at the most a limited number of product categories, not to the regulation as a whole, which provides limits on 53 categories of AIM coatings. *See Duquesne Light Co.* v. *EPA* 166 F.3d 609, 613 (3d Cir. 1999) (in approving a SIP revision, EPA is not required "to engage in a formalistic exercise by conducting a fuller demonstration of the stringency of" a definition contained in a SIP, when "[s]uch a 'demonstration' would be a technical formality *as the stringency of that definition is not only apparent on the face of the definition, but also conceded by Duquesne*") (emphasis added). We believe that there is no plausible basis to reject this regulation, which is more stringent than Federal law overall, merely because the commenter has speculated that even more reductions might be achieved by selectively raising the VOC content limits for some product categories covered by the comprehensive regulation.

Finally, in response to the District's AIM coatings rule, EPA believes that it is likely that manufacturers will produce, and users will use, products that are lower in VOC content. While an important consideration, EPA believes

[7] It must also be noted that unlike the Federal AIM rule, the state AIM rules (including the District's), include enforceable provisions which prohibit the applicator end users from adding additional solvent to complying coatings. D.C. Code Sec 20–750.5.

that coatings performance is not exclusively dependent upon VOC content, as evidenced by the fact that manufacturers already produce coatings that meet these limits for sale and use.

For these reasons EPA disagrees that these comments form a basis to conclude that EPA's "on its face" stringency finding is insufficient to meet the requirements of the CAA and that EPA's reliance on *Union Elec. Co.* v. *EPA*, 427 U.S. 246 (1976) to support its approval of the District's AIM rule is misplaced.

D. *The CAA and Its Regulations Require That Data or Evidence Assessing the Air Quality Impacts Associated With a SIP Revision Must Be Submitted in Support of the SIP Revision.* The commenter alleges that the section 110(a)(K) authorizes EPA to require, and that EPA regulations in 40 CFR part 51 (subparts G and F and Appendix v) demand, that states submit data and modeling in support of a SIP revision for the purposes of predicting its impact on air quality. The commenter raises these arguments in the Petition for Reconsideration to urge that EPA require Pennsylvania to submit such data and modeling in support of its AIM coatings rule. As noted previously, SWC has incorporated this Petition for Reconsideration in its comments opposing approval of the District's AIM coatings rule.

Response: EPA disagrees with this comment with regard to its approval of state AIM coatings rules in general and in the specific instance of its approval of the District's AIM coatings rule. Section 110(K) of the Act authorizes EPA to prescribe the modeling and data to be provided in a state plan or plan revision. The statute commits to EPA's discretion whether and what type of data or modeling a state should submit in support of a SIP revision for the purposes of predicting the impact of that SIP revision on air quality. EPA's regulations in 40 CFR part 51, cited by the commenter, apply only to control strategy plans. Control strategy plans are by definition *a combination of measures to achieve the aggregate reduction* necessary for attainment and maintenance of the NAAQS. 40 CFR 51.100 (n). A state regulation to control VOCs from a source or source category, such as the District's AIM coatings rule, is a single control measure and is not. by itself, a control strategy for an ozone nonattainment area subject to the requirements of part D of the CAA. As such, submittal of such a control measure as a SIP revision is not required to meet the requirements of 40 CFR part 51 for submittal of a control strategy SIP or SIP revision. Rate-of-progress and attainment plans are control strategy plans for ozone nonattainment areas.

Section 182 of the CAA sets out the plan submissions and requirements for ozone nonattainment areas. The requirements and schedules mandated by section 182 provide evidence that compliance with the CAA contemplates the submittal of control measures as SIP revisions separately from control strategy plans. For example, the states which comprise ozone nonattainment areas were required to submit corrections to previously SIP-approved reasonably available control technology (RACT) requirements by May 15, 1991 (6 months from the November 15, 1990 date of enactment of the 1990 CAA) and to submit newly applicable RACT provisions as SIP revisions by November 15, 1992 (2 years from the date of enactment of the 1990 CAA). Submittal of these state rules to impose RACT on a widely divergent range of source categories of VOC as SIP revisions required no data or modeling with regard to their individual impact on the NAAQS for ozone for approval by EPA. The first control strategy plan SIP revision required by section 182 of the CAA (the 15 percent ROP plan) was not due to EPA until November 15, 1993 (3 years after the date of enactment of the 1990 CAA). The attainment demonstration plans were not due to EPA until November 15, 1994 (4 years after the date of enactment). With regard to ozone nonattainment areas, these attainment demonstrations plans are the only plans which the CAA requires be based on photochemical grid modeling or any other analytical method determined by the Administrator of EPA.

EPA disagrees with the commenter's contention that every type of SIP revision submitted to EPA must be supported by data and modeling to assess its impact on ambient air quality and the NAAQS. As numerous of EPA's SIP approval Final actions published in the **Federal Register** amply demonstrate, EPA has approved hundreds of SIP revisions submitted by states consisting of state rules to control VOCs from stationary sources and source categories where such approvals did not require data and modeling to assess the individual rules' impacts on the NAAQS. The CAA and EPA's regulations found in 40 CFR part 51 for the requirements of state plans and plan revisions provide EPA the flexibility to determine and require such technical support as EPA deems necessary for approval depending upon the nature of the SIP revision.

For all these reasons, EPA disagrees that it cannot approve the District's AIM coatings rule SIP revision because the District's submittal does not include data and modeling to assess its AIM coatings rules's individual impact on the NAAQS for ozone.

E. *Comment: The District of Columbia AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 183(e)(9)*—The commenter states that in 1998, after a seven-year rule development process, EPA promulgated its nationwide regulations for AIM coatings pursuant to section183(e) of the Act. The commenter notes that the District's AIM coatings rule imposes numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenter asserts that section 183(e)(9) of the Act requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenter believes that the District failed to engage in that required consultation, and, therefore (1) the District violated section 183(e)(9) in its adoption of the District AIM coatings rule, and (2) approval of the AIM coatings rule by EPA would violate, and is, therefore, prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenter, section 183(e)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to "whether any other state or local subdivision has promulgated or is promulgating regulations or any products covered under [section 183(e)]." The commenter erroneously construes this as a requirement for permission rather than informational consultation. Further, the final Federal AIM coatings regulations at 40 CFR 59.410 explicitly provides that states and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. *See also* 63 FR 48848, 48884, September 11, 1998. In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend section 183(e) to preempt any existing or future state rules governing VOC emissions from consumer and commercial products. *See id.* at 48857. Accordingly, the District retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the submission for inclusion in the SIP. *See*

Union Elec. Co. v. *EPA*, 427 U.S. at 265–66 (1976). Although national uniformity in consumer and commercial product regulations may have some benefit to the regulated community, EPA recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to the District's adoption of its AIM coatings rule. On March 28, 2001, the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including the District, which officially made available the OTC model rules, including the AIM coatings model rule. *See* the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has been included in administrative record of this final rulemaking. That MOU includes the following text, "WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other States and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings* * *." (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking). Therefore, there is no validity to the commenter's assertion that the District failed to consult with EPA in the adoption of its AIM coatings rule. EPA was fully cognizant of the requirements of the District's AIM coatings rule before its formal adoption by the District.[8] For all these reasons, EPA disagrees that the District violated section 183(e)(9) in its adoption of the its AIM coatings rule, and disagrees that approval of the District AIM coatings rule by EPA is in violation of or prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

F. *Comment: The District of Columbia's AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 184(c), and Approval of the SIP Revision Would, Itself, Violate That Section*—The commenter believes the OTC violated section 184(c)(l) of the Act by failing to "transmit" its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the Model Rule through the notice, comment and approval process required by CAA section184(c)(2)–(4). The commenter asserts that these purported violations of the Act prevented the District from adopting the District's AIM coatings rule, and now prevent EPA from validly approving it as a revision to the District's SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that "the [OTC] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart." It is important to note that the OTC model AIM coatings rule was not developed pursuant to section 184(c)(1), which provision is only triggered "[u]pon petition of any state within a transport region established for ozone* * *." No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon state petition under section 184(e)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. Section 184 is a voluntary process and the OTC may opt for that process or another. This provision of the Act was not intended to prevent OTC's development of model rules which states may individually choose to adapt and adopt on their own, as the District did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its own rule from the OTC model, the District was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

As previously stated, on March 28, 2001, the OTC member states signed a MOU on regional control measures, including the AIM coatings model rule. The OTC did not develop recommendations to the Administrator for additional control measures. The MOU stated that implementing these rules will help attain and maintain the 1-hour standard for ozone and were therefore made available to the states for use in developing their own regulations.[9]

G. *Comment: The District of Columbia's AIM Coatings Rule Violates the Commerce Clause and the Equal Protection of the U.S. Constitution*—The commenter's title heading of this comment states that the District's AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution, but the text that follows that title heading provides no arguments or assertions to support this claim. In both the title heading and the text that follows, the commenter claims that the District's AIM coatings rule also violates the Commerce Clause of Article I, section 8, of the U.S. Constitution,

[8] While EPA reviewed the model AIM coatings rule and the draft District version of that rule, EPA had no authority conferred under the Clean Air Act to dictate the exact language or requirements of the rule. As explained previously, EPA's role is to review a state's submission to ensure it meets the applicable criteria of section 110 generally, and in the case of an AIM rule to ensure its is at least as stringent as the otherwise applicable Federal rule.

[9] The commenter argues that section 184 either does not require a formal petition to be triggered, or, alternatively, that the MOU between the OTC states qualifies as a "petition." With respect to their first argument, section 184(c) says that the OTC "may, after notice and opportunity for public comment, develop recommendations for additional control measures * * *" and that the recommendations shall be presented to the EPA Administrator. This mechanism is triggered "upon petition of any State with a transport region established for ozone, and based on a majority vote of the Governors on the Commission (or their designees)* * *." 42 U.S.C. 7511d(c)(1) (emphasis added). The clear and unambiguous language of the Act requires a petition and a vote. We reasonably interpret section 184(c), in light of the obligation to conduct a vote, to require the petition to be a manifestation of an express intent to invoke the section 184(c) process. Further, any petition would need to be sufficient in its clarity to put members on notice of their obligation to hold a vote and fulfill the other provisions of the section 184 process. We do not believe that a document which in hindsight might be construed as an inadvertent opt-in to the voluntary section 184 process could be the petition affirmatively intended by the Act.

Even though the OTC did not develop the model AIM coatings rule pursuant to section 184(c)(1) of the Act, nevertheless it provided ample opportunity for OTC member and stakeholder comment by holding several public meetings concerning the model rules including the AIM coatings model rule. The sign-in sheets or agenda for four meetings held in 2000 and 2001 at which the OTC AIM coatings model was discussed (some of which reflect the attendance of a representative of the EPA and/or the commenter), have been placed in the administrative record for this final rulemaking.

With respect to the argument that the MOU is in hindsight a "petition" triggering the section 184 rule development process, nothing in the record indicates that the OTC treated this MOU as a petition to initiate the section 184 process. This is not surprising because the MOU's plain language recites that the model rules had already been developed that by the time the MOU was signed ("WHEREAS * *. * OTC developed final model rules for the following source categories* * * ."). Under section 184(c) the petition initiates the voluntary section 184 rule development process. 42 U.S.C. 7511d(c)(1). The MOU, however, came near the end of the OTC's model rule development process. This is a strong indication that the OTC did not intend the AIM coatings rule, or the other rules recited in the MOU, to be subject to the section 184 process. By its failure to express an intention to trigger the section 184 rule development mechanism, we reject the argument that the MOU constitutes a section 184(c) petition. The MOU neither expressly nor inadvertently opted-in the OTC states to the section 184 process.

because it allegedly imposes an unreasonable burden on interstate commerce. The commenter asserts that because the District's AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule imposes unreasonable restrictions and burdens on the flow of coatings in interstate commerce. The commenter further claims that the burdens of the District's AIM coatings rule are excessive and outweigh the benefits of the rule.

Response: As indicated previously, the commenter provides no arguments or assertions as to the claim made in the title heading of this comment that the District's AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution (*see* pages 13–14 of the letter dated January 26, 2005 from the Counsel for the Sherwin-Williams Company to Makeba Morris, Chief, Air Quality Planning Branch, U.S. EPA Region III, regarding EPA's Proposal to Approve SIP Revision Submitted by the State of Maryland Concerning Architectural and Industrial Maintenance (AIM) Coatings). Moreover, the text of the comment following the title heading does not reference or even make mention of the Equal Protection Clause. Lastly, in no other comment submitted by SWC on EPA's December 27, 2004 (69 FR 77149) proposed approval of the District's AIM coatings rule is there any mention or reference to the Equal Protection Clause of the U.S. Constitution. EPA does not believe that any provision of the District's AIM rule violates the Equal Protection Clause of the U.S. Constitution.

Regarding the comment that the District's AIM coatings rule violates the Commerce Clause of the U.S. Constitution, EPA agrees with this comment only to the extent that it acknowledges that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenter's practical concerns caused by differing state regulations, but disagrees with the commenter's view that the District AIM coatings rule impermissibly impinges on interstate commerce. A state law may violate the Commerce Clause in two ways: (i) By explicitly discriminating between interstate and intrastate commerce; or (ii) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The District's AIM coatings rule does not explicitly discriminate against interstate commerce because it applies evenhandedly to all coatings manufactured or sold for use within the state. At most, therefore, the District's AIM coatings rule could have an incidental impact on interstate commerce. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. *See, Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes when the burden on interstate commerce is "clearly excessive in relation to the putative local benefits." *Id.* at 142.

At the outset, EPA notes that it is unquestionable that the District has a substantial and legitimate interest in obtaining VOC emissions for the purpose of attaining the ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. *See, e.g., National Ambient Air Quality Standards for Ozone: Final Response to Remand*, 68 FR 614, 620–25 (January 6, 2003). Thus, the objective of the District in adopting their AIM coatings rule is to protect the public health of the citizens of the District. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g., Kassel* v. *Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g, Minnesota* v. *Clover Leaf Creamery, et al.*, 449 U.S. 456 (1981) (upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenter asserts, without reference to any facts, that the District's AIM coatings rule imposes burdens and has impacts on consumers that are "clearly excessive in relation to the purported benefits * * *." By contrast, EPA believes that any burdens and impacts occasioned by the District's AIM coatings rule are not so overwhelming as to trump the District's interest in the protection of public health. First, the District's AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the state's own boundaries. The District's rule excludes coatings sold or manufactured for use outside the state or for shipment to others (section 751.1). The District's AIM coatings rule cannot be construed to interfere with the transportation of coatings through the state en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g., Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1938).

Second, the District's AIM coatings rule is not constructed in such as way that it has the practical effect of requiring extraterritorial compliance with the District's VOC limits. The District's AIM coatings rule only governs coatings manufactured or sold for use within the state's boundaries. The manufacturers of coatings in interstate commerce are not compelled to take any particular action, and they retain a range of options to comply with the rule, including, but not limited to: (1) Ceasing sales of nonconforming products in the District; (2) reformulating nonconforming products for sale in the District and passing the extra costs on to consumers in that state; (3) reformulating nonconforming products for sale more broadly; (4) developing new lines of conforming products; or (5) entering into production, sales or marketing agreements with companies that do manufacture conforming products. Because manufacturers or sellers of coatings in other states are not forced to meet the District's regulatory requirements elsewhere, the rule does not impose the type of obligatory extraterritorial compliance that the courts have considered unreasonable. *See, e.g., NEMA* v. *Sorrell*, 272 F.3d 104 (2d Cir. 2000) (state label requirement for light bulbs containing mercury sold in that state not an impermissible restriction). It may be that the District's AIM coatings rule will have the effect of reducing the availability of coatings or increasing the cost of coatings within the District, but courts typically view it as the prerogative of the state to make regulatory decisions with such impacts upon its own citizens. *NPCA* v. *City of Chicago*, 45 F.3d 1124 (7th Cir. 1994), *cert. denied*, 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means to meet objective, but that is up to the local government to decide).

Third, the burdens of the District's AIM coatings rule typically do not appear to fall more heavily on interstate commerce than upon intrastate commerce. The effect on manufacturers and retailers will fall on all manufacturers and retailers regardless of location if they intend their products for sale within the District, and does not

appear to have the effect of unfairly benefitting in-state manufacturers and retailers. The mere fact that there is a burden on some companies in other states does not alone establish impermissible interference with interstate commerce. *See, Exxon Corp.* v. *Maryland*, 437 U.S. 117, 126 (1978).

In addition, EPA notes that courts do not typically find violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g., Oxygenated Fuels Assoc., Inc.* v. *Davis*, 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress); *NEMA* v. *Sorell*, 272 F.3d 104 (2d Cir. 2000) (RCRA's authorization of more stringent state regulations confers a "sturdy buffer" against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the District's AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CFR 59.400 *et seq.* Congress did not, however, intend section 183(e) to pre-empt additional state regulation of coatings, as is evident in section183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See, e.g.*, the National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59.410, and the **Federal Register** which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intended to create such Federal preemption, it does so through explicit provisions. *See, e.g.*, Section 209(a) of the Act, which pertains to state or local emissions standards for motor vehicles; and section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon "cooperative federalism," which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations could create a checkerboard of differing requirements would not be the best approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that the District and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under section 116 of the Act, states have the authority to do so, and significantly, many states in the Northeast have joined together to prepare and promulgate regulations more restrictive than the Federal AIM coatings rule to apply uniformly across that region. This regional collaboration provides regional uniformity of standards. The District may have additional burdens to insure compliance with its rule, but for purposes of this action, EPA presumes that the District takes appropriate actions to enforce it as necessary. The EPA has no grounds for disapproval of the SIP revision based upon the Commerce Clause comment.

H. *Comment: The Emission Limits and Compliance Schedule in the District of Columbia AIM Coatings Rule Are Neither Necessary nor Appropriate To Meet Applicable Requirements of the Clean Air Act*—The commenter claims that the District AIM coatings rule is not "necessary or appropriate" for inclusion in the District SIP, because EPA did not direct the District to achieve VOC reductions through the AIM coatings rule, but left it to the District to decide how such reduction can be achieved. The commenter further claims that the District AIM coatings rule is not necessary or appropriate for inclusion in the District SIP because of the numerous alleged procedural and substantive failings on the part of the District in promulgating the rule.

Response: EPA disagrees with this comment. If fulfillment of the "necessary or appropriate" condition of section 110(a)(2)(A) required EPA to first determine that a measure was necessary or appropriate and require a state to adopt that measure, this condition would present a "catch 22" situation. EPA does not generally have the authority to require the state to enact and include in its SIP any particular control measure, even a "necessary" one.[10] However, under section 110(a)(2)(a) a control measure must be either "necessary *or* appropriate" (emphasis added); the use of the disjunctive "or" does not provide that a state must find that *only* a certain control measure *and no other measure* will achieve the required reduction. Rather, a state may adopt and propose for inclusion in its SIP any measure that meets the other requirements for approvability so long as that measure is at least as appropriate, though not exclusive, means of achieving emissions reduction. *See also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 264–266 (1976) (holding that "necessary" measures are those that meet the 'minimum conditions' of the Act, and that a state "may select whatever mix of control devices it desires," even ones more stringent than Federal standard, to achieve compliance with a NAAQS, and that "the Administrator must approve such plans if they meet the minimum requirements" of section 110(a)(2) of the Act). Clearly, in light of the Act and the case law, EPA's failure to specify the state adoption of a specific control measure cannot dictate whether a measure is necessary or appropriate.

In this particular instance, the District needs reductions to satisfy the requirements for rate-of-progress (ROP) and attainment plans (including contingency measures) for the reclassified Metropolitan Washington DC severe 1-hour ozone nonattainment area. It is the District's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions needed to satisfy the ROP

[10] As noted in *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997), EPA does have the authority within the mechanism created by section 184 of the Act to order states to adopt control measures recommended by the OTC, if EPA agrees with and approves that recommendation. 108 F.3d, n.3 at 1402. As we have previously stated, the OTC model AIM coatings rule was not developed pursuant to the section 184 mechanism; EPA therefore has no authority to order that the District or any other state adopt this measure in order to reduce VOC emissions.

and attainment plan requirements for its 1-hour ozone severe nonattainment area. Because commenters might find it more necessary or appropriate to obtain the needed VOC emission reductions elsewhere is not a basis for EPA to disapprove the rule implementing the District's determination of the best approach to obtain the needed reductions.

The District's April 16, 2004 SIP revision submittal (supplemented on September 20 and November 24, 2004) provides evidence and certification that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the District's law and constitution that are related to adoption of a SIP revision. As noted in *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2004):

> [T]he CAA only requires that the states provide "necessary assurances that the State * * * will have adequate * * * authority under State (and as appropriate, local) law to carry out such implementation plan (and it is not prohibited by any provision of * * * State law from carrying out such implementation plan or portion thereof)." 42 U.S.C. 7410(a)(2)(E)(i). There is no statutory requirement that the EPA review SIP submissions to ensure compliance with state law * * *. Such a requirement would be extremely burdensome and negate the rationale for having the state provide the assurances in the first instance. The EPA is entitled to rely on a state's certification unless it is clear that the SIP violates state law, and proof thereof, such as a state court decision, is presented to EPA during the SIP approval process. 355 F.3d 817, n.11 at 830.

The commenter has offered no proof, such as a court decision, that the District's AIM coatings rule clearly violates local law. EPA therefore is relying on the District's certification that it had the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the District's law that are related to adoption of this SIP revision.

I. *Comment: EPA's Action To Approve or Disapprove the District's AIM Coatings Rule Is a "Significant Regulatory Action" as Defined by Executive Order 12866, 58 FR 51735 (September 30, 1993).*

Response: EPA disagrees with this comment. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. The commenter alleges that EPA's approval of the District's AIM coatings rule is a "significant regulatory action" because it meets several of the following criteria specified in Executive Order 12866: "[it will have] an annual effect on the economy of $100 million or more or [it will] 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 * * *" However, this action merely approves existing state law as meeting Federal requirements. EPA's approval of this SIP revision imposes no additional requirements beyond those imposed by state law. Accordingly, this action meets none of the criteria listed above. Any cost or any material adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities exist, if at all, due to the District's approval of its state AIM coatings rule, not by EPA's approval of that rule into the District's SIP. If EPA failed to act on the District's AIM coatings rule, the effects of the rule would not be changed because this rule went effect in the District on January 1, 2005. Nothing that EPA might do at this point in time alters that fact.

Furthermore, the District voluntarily adopted its version of the OTC model AIM coatings rule and, as the commenter itself acknowledges, EPA could not impose this control measure on the District. *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997). EPA's approval of this state rule merely fulfills its statutory obligation under the Act to review SIP submissions and approve state choices, provided that they meet the criteria of the Act.

J. *Comment: The District of Columbia Has Not Analyzed the Cost-Effectiveness of Any Reasonably Available Alternatives to the Proposed Rule*—The commenter states that the District has an obligation to perform a thorough evaluation of the cost-effectiveness of the District AIM coatings rule, including a comparison with the cost-effectiveness of reasonably available alternatives. The rule, and related rulemaking materials, do not analyze the cost-effectiveness of any reasonably available alternatives to the proposed rule. The commenter claims that this omission demonstrates the arbitrary and capricious nature of the rule, and clearly is a direct violation of the laws of the District of Columbia.

Response: EPA disagrees with this comment. The cost per ton figure determined by the District in its economic analysis, and its decision to rely upon information from California, are all decisions which fall within a state's purview, and issues regarding those decisions are rightly raised by interested parties to the state during its regulatory adoption The District's April 16, 2004 SIP revision submittal (supplemented on September 20 and November 24, 2004) provides evidence and certification that it that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the District's law that are related to adoption of a SIP revision. (*See* EPA's response to Comment II. H.). *See BCCA Appeal Group* v. *EPA*, 355 F.3d 817 n.11 at 830 (EPA may rely on the state's certification that it has complied with applicable state requirements for promulgating a rule submitted as a revision to its SIP).

K. *Comment: Additional Comments Submitted to the OTC and Commonwealth of Virginia Included, by Reference, in the Comments Submitted to EPA on the December 27, 2004 Proposed Approval of District's AIM Coatings Rule (69 FR 77149)*—As previously noted the SWC has included, by reference, in its comments to EPA on the proposed approval of the District's AIM rule the comments it submitted to the OTC in a letter dated January 11, 2001 (and its attachments). The SWC has also included, by reference, the comments it submitted to the District during its adoption process. Most of theses comments have already been summarized and responded to previously in Comments A–K as the SWC also submitted them directly to EPA on its proposed rulemaking. The following summarizes the remaining comments submitted to the District during its rule adoption process:

(1) The commenter has significant concerns with the proposed standards for certain paints and coatings, *e.g.*, interior wood clear and semi-transparent stains, interior wood vanishes, interior wood sanding sealers, exterior wood primers, and floor coatings. The commenter asserts that the District's proposed AIM coatings regulation is based upon the inaccurate assumption that compliant coatings are available or can be developed which will satisfy customer requirements and meet all of the performance requirements of these categories. The commenter contends that such coatings are not effectively within the limits of current technology and that this inaccurate assumption will result in increased and earlier repainting which can damage floors in the District due to seasonal variations in temperature and humidity.

(2) The commenter asserts that the economic analysis of the District's proposed AIM coatings rule is inaccurate because it uses a cost figure of $6400 per ton of emissions reduced based upon an economic analysis done for California. The commenter contends that the cost figure is inappropriate

given the differences in the stringency of the current requirements for AIM coatings in the District versus California, and therefore, the District needs to make an independent determination of the cost of VOC reductions from its proposed AIM coatings regulation.

(3) The commenter is concerned that the California Air Resources Board (CARB) suggested control measure (SCM) has been adopted in only 25 of the 35 air districts in California since it was first issued in June 1977. In 22 of the districts that have adopted the SCM, there are significant modifications and revisions, typically in the VOC limits for one or more AIM coating categories. Such modifications and revisions are necessary in those categories where there are no known substitute products, where it is shown that no substitute is necessary, since the increase in VOC emissions is marginal.

(4) The commenter is concerned that the proposed rule does not allow averaging of VOC content for various coatings produced by a manufacturer, which the CARB SCM allows.

(5) The commenter is concerned that there are no suitable substitutes for all the applications for these 5 categories of products, *e.g.*, interior wood clear and semi-transparent stains, interior wood vanishes, interior wood sanding sealers, exterior wood primers, and floor coatings. No water-based substitute meets performance standard for many applications, and their use can cause grain raising, lapping and a panelization problem, and that the District has not addressed these issues.

(6) The commenter suggests that there should be numerous exemptions that should be included in the District's rule, such as low-temperature products manufactured by the commenter intended for use in colder weather when ozone is not an issue. If more consumers use coatings in non-summer months, some of the summer ozone problems will disappear. Low temperature products should be encouraged with incentives, not regulated out of the market.

(7) The commenter is concerned that the CARB report contains numerous flaws which prevent it from being a valid basis for the proposed AIM rule.

(8) The commenter was not aware of the Districts prior hearing regarding the proposed rule and requests a hearing for an opportunity to present live testimony regarding the proposed rule, prior to the District taking any action on the proposal.

Response: With regard to the comments submitted to the OTC, and to the District on its proposed AIM coatings rule and subsequently, by reference, to EPA on its December 27, 2004 proposed approval of the District's April 16, 2004 SIP revision request (supplemented on September 20 and November 24, 2004), it is important to understand EPA's role with regard to review and approval or disapproval of rules submitted by states as SIP revisions. EPA can only take action upon the final adopted version of a state's regulation as submitted by that state in its SIP revision request. It is not within EPA's authority, by its rulemaking on the SIP revision or otherwise, to change or modify the text or substantive requirements of a state regulation. Therefore, EPA cannot modify the District's AIM coatings regulation to address the commenter's concerns.

The District's reliance upon both technical and cost analyses from California in its decisions with regard to the provisions in its final AIM coatings rule, its decisions to not include provisions for averaging, and its decisions to not provide exemptions are all decisions which fall within a state's purview, and issues regarding those decisions are rightfully raised by interested parties to the state during its regulatory adoption process. Therefore, it was appropriate that the SWC commented to the District on these matters during the adoption of its AIM coatings rule. A complete SIP revision submission from a state includes a compilation of timely comments properly submitted to the state on the proposed SIP revision and the state's response thereto (40 CFR part 51, appendix V, 2.1 (h)). EPA has reviewed the District's SIP revision submittal and has determined that comments the SWC submitted to the District (which the SWC has incorporated by reference as comments on this rulemaking), along with the District's responses to those comments, are included therein.

With regard to the SWC's comment that it was not aware of the public hearing held by the District regarding the proposed rule and its request for an additional hearing to present live testimony regarding the District's proposed AIM rule, EPA notes that in addition to the public hearing held on July 9, 2003 to which the SWC's comment refers (notice of which was published in the Washington Times), the District held a second public hearing on its AIM coatings rule on November 15, 2004 (notice of which was also published in the Washington Times). The SWC did not attend this second public hearing. EPA's review of the District's April 16, 2004 SIP revision request (supplemented on September 20 and November 24, 2004) indicates that the District satisfied the requirements of section 110(a) of the CAA with regard to providing public notice and public hearings on its AIM coatings rule SIP revision.

The District's April 16, 2004 SIP revision submittal (supplemented on September 20 and November 24, 2004) provides evidence and certification that it that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the District's law that are related to adoption of this SIP revision. (*See* EPA's response to Comment II. H.). In the context of a SIP approval, EPA's review of these state decisions is limited to whether the SIP revision meets the minimum criteria of the Act. Provided that the rule adopted by the state satisfies those criteria, EPA must approve such a SIP revision. *See, Union Elec Co.* v. *EPA, BCCA Appeal Group* v. *EPA,* 355 F.3d 817, n.11 at 830.

III. Final Action

EPA is approving the District's SIP revision for the control of VOC emissions from AIM coatings rule submitted on April 16, 2004, and supplemented on September 20 and November 24, 2004. The District's AIM coatings rule is part of the District's strategy to satisfy the CAA's requirements for a severe ozone nonattainment area and to achieve and maintain the ozone standard in the Metropolitan Washington, DC ozone nonattainment area.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the District of Columbia's AIM coatings rule, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by adding the following entries to "District of Columbia Municipal Regulations (DCMR), Title 20—Environment, Chapter 7—Volatile Organic Compounds':

■ a. Adding entries for section 749 through Section 754.

■ b. Adding a new entry for section 799 after the existing entries for section 799.

The added entries read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
*	*	*	*	*
Chapter 7 Volatile Organic Compounds				
*	*	*	*	*
Section 749	Architectural and Industrial Maintenance Coating—General Requirements.	04/16/04 11/26/04	5/21/05 [Insert page number where the document begins].	
Section 750	Architectural and Industrial Maintenance Coating— Standards.	04/16/04 11/26/04	5/21/05 [Insert page number where the document begins].	
Section 751	Architectural and Industrial Maintenance Coating—Exemptions.	04/16/04 11/26/04	5/21/05 [Insert page number where the document begins].	
Section 752	Architectural and Industrial Maintenance Coating—Labeling Requirement.	04/16/04 11/26/04	5/21/05 [Insert page number where the document begins].	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 753	Architectural and Industrial Maintenance Coating—Reporting Requirements.	04/16/04 11/26/04	5/21/05 [Insert page number where the document begins].	
Section 754	Architectural and Industrial Maintenance Coating—Testing Requirements.	04/16/04 11/26/04	5/21/05 [Insert page number where the document begins].	
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Section 799	Definitions	04/16/04 11/26/04	5/21/05[Insert page number where the document begins].	
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[FR Doc. 05–9312 Filed 5–11–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA151–5085; FRL–7910–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emissions Standards for AIM Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the control of volatile organic compounds (VOC) emissions from architectural and industrial maintenance (AIM) coatings. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

DATES: *Effective Date:* This final rule is effective on June 13, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2004 (69 FR 31780), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a Virginia regulation pertaining to the control of VOC from AIM coatings. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on February 23, 2004. The specific requirements of Virginia's SIP revision for AIM coatings and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA received adverse comments on the June 7, 2004 NPR. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the Virginia AIM coatings rule. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with Virginia and manufacturers to explore ways to ensure that the rule achieves the intended VOC emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule.

II. Public Comments and EPA Responses

The National Paint and Coatings Association (NPCA) is one of the adverse commenters on EPA's June 7, 2004 proposed approval of Virginia's AIM coatings rule. The NPCA's comments include, by reference, the comments it previously submitted to Virginia on the proposed version of the AIM coatings rule during the Commonwealth's adoption process as transmitted by VADEQ in its February 23, 2004 SIP revision submittal to EPA. The NPCA also includes, by reference, the comments submitted by the Sherwin Williams Company (SWC) to EPA on the June 7, 2004 proposed approval of Virginia's AIM coatings rule. The SWC is the other adverse commenter on EPA's June 7, 2004 proposed approval of Virginia's AIM coatings rule. The SWC also includes, by reference, the comments it submitted to Virginia on the proposed version of the AIM coatings rule during the Commonwealth's adoption process, and the comments it submitted to the Ozone Transport Commission in a letter dated January 11, 2001.

The following summarizes the comments submitted by the NPCA and the SWC to EPA on the June 7, 2004 proposed approval of Virginia's AIM coatings rule and EPA's response to those comments.

A. *Comment:* Using Flawed Data Violates the Data Quality Objectives Act and Administrative Procedures Act—The commenters assert that the Virginia AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act ("DQOA") (Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)). The data at issue is contained in what the commenters characterize as a "study prepared by E.H. Pechan & Associates" (Pechan Study) in 2001. The alleged flaws relate to projected emissions reductions calculated in the Pechan Study.

The commenters assert that certain of the underlying data and data analyses are allegedly "unreproduceable." Further, the commenters assert that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to

the Federal AIM coatings rule, than was calculated in the Pechan Study (54 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenters state that EPA must not approve the proposed Virginia's AIM coatings rule as a SIP revision.[1]

Response: EPA disagrees with this comment. What the commenters characterize as the Pechan Study is not at issue in this rulemaking. The Pechan Study was not submitted to EPA by Virginia in its request that EPA approve its AIM coatings rule.[2] The validity of the Pechan Study data is not at issue because Virginia did not request approval of a quantified amount of VOC emission reduction from the enactment of its regulation. Rather, this AIM coatings regulation has been submitted by Virginia, and is being considered by EPA, on the basis that it strengthens the existing Virginia SIP. The commenters do not dispute that the Virginia AIM coatings rule will, in fact, reduce VOC emissions.

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs for each designated "air quality control region" within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and *must approve* the SIP revision if it is found to meet the minimum requirements of the Act. *See* section 110(k)(3) of the Act, 42 U.S.C. 7410(k)(3); *see also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. *See* section 116 of the Act, 42 U.S.C. 7416. EPA must disapprove state plans, and revisions thereto, that are less stringent than a standard or limitation provided by Federal law. *See* section 110(k) of the Act, 42 U.S.C. 7410 (k); *see also Duquesne Light* v. *EPA*, 166 F.3d 609 (3d Cir. 1999).

The Pechan Study is not part of Virginia's submission in support of its AIM coatings rule. Because Virginia's February 23, 2004 submission does not seek approval of a specific amount of emissions reductions, the level of emissions reductions that might be calculable using data contained in the Pechan Study is irrelevant to whether EPA should approve this SIP revision.[3] The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that Virginia's AIM coatings rule be at least as stringent as the otherwise applicable Federal AIM coatings rule set forth at 40 CFR 59.400, subpart D.[4]

EPA has concluded that the Virginia AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenters' conclusion that the Virginia AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenters, *i.e.*, that the commenters' "better" data demonstrates that OTC Model AIM coatings rule achieves a 54 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule. Rather, EPA has determined that the Virginia's AIM coatings rule is, on its face, more stringent than the Federal AIM coatings rule. Examples of categories for which Virginia's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule VOC content limit for non-flat high gloss coatings is 380 grams/liter while the Virginia AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the Virginia AIM coatings rule's is 400 grams/liter. Examples of where Virginia AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for antenna coatings and low-solids coatings. In both rules the VOC content limits for these categories are 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, EPA believes that Virginia's AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule. Further, EPA has received no comments that the Virginia AIM coatings rule is less stringent than the Federal AIM coatings rule.

B. *Comment:* The Virginia AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 183(e)(9)—The commenters state that in 1998, after a seven-year rule development process, EPA promulgated its nationwide emission limitation for AIM coatings pursuant to Clean Air Act section 183(e). The commenters note that Virginia's AIM coatings rule seeks to impose numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenters assert that

[1] One of the commenters has submitted a "Request for Correction of Information" (RFC) dated June 2, 2004, to EPA's Information Quality Guidelines Office in Washington, DC, which raises substantively similar issues to those raised by this comment. By letter dated February 25, 2005 from Robert Brenner, Principal Deputy Assistant Administrator to the Counsel for Sherwin Williams Company, EPA responded separately to the RFC. A copy of that letter is included in the administrative record for this final rulemaking.

[2] The commenters concede that the Pechan Study and related spreadsheet are not part of the record submitted to EPA by Virginia. They assert, however, that there are references to the Pechan Study in other materials submitted by Virginia. Whether or not the Pechan Study, or data from that study, was submitted to EPA does not alter our analyses or conclusion, described herein, that the Pechan Study is not relevant in this rulemaking. Consequently, because the Pechan Study is not relevant to this rulemaking, the commenter's reliance on the document entitled, "A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information," EPA 100/B–03–001 (June 2003), provided as exhibit C to SWC's comments, is misplaced. This "Assessment Factors" document describes the considerations EPA takes into account in evaluating scientific or technical information "used in support of Agency actions." *Assessment Factors*, p.1. The Pechan Study is not being used in support of this rulemaking, therefore, EPA is under no obligation to evaluate the scientific or technical information in that study.

[3] After submission of a request for approval of a quantified amount of emissions reductions credit due to the AIM coatings rule by the Commonwealth, EPA will evaluate the credit attributable to the rule. Whatever methodology and data the Commonwealth uses in such a request will become ripe for public comment.

[4] The commenters assert that "it makes no difference whether Virginia is asking for credits at this time for there to be a Data Quality Act challenge," apparently because the fact that material from the Pechan Study appears in the rulemaking docket for this action, there is "dissemination of flawed data." This ignores that fact that EPA is taking no stance on the Pechan Study and its underlying data. That study is irrelevant to our analysis as to whether the Virginia AIM rule is approvable as a measure meeting the requirements of section 110 of the Act that strengthens the Virginia SIP. EPA is not required to address irrelevant material merely because it is in the rulemaking docket. Section 307(d)(6)(B) of the CAA (which applies to, among other things, SIP revisions, *see* 42 U.S.C. 7607(d)(1)(B)), requires EPA to respond to "each of the significant comments, criticisms, and new data submitted * * * during the public comment period." 42 U.S.C. 7607(d)(6)(B). The United States Supreme Court has held that "irrelevant" matter in the docket is not "significant" as that term is used in the CAA, and EPA has no duty to respond to it. *See Whitman* v. *Amer. Trucking Ass'ns., Inc.*, 531 U.S. 457, n. 2 at 470 (2001). With respect to the Pechan data, we are not disseminating it, but we rather are fulfilling our statutory role as custodian of a docket containing irrelevant material submitted by third parties.

section 183(e)(9) requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenters believe that Virginia failed to engage in that required consultation, and, therefore, that: (1) Virginia violated section 183(e)(9) in its adoption of the Virginia AIM coatings rule, and (2) approval of the AIM coatings rule by EPA would violate, and is, therefore, prohibited by, sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenters, section 183(e)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to "whether any other state or local subdivision has promulgated or is promulgating regulations on any products covered under [section 183(e)]." The commenters erroneously construe this as a requirement for permission rather than informational consultation. Further, the final Federal AIM coatings regulations at 40 CFR 59.410 explicitly provide that states and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. *See also* 63 FR 48848, 48884 (September 11, 1998). In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend section 183(e) to preempt any existing or future state rules governing VOC emissions from consumer and commercial products. *See id.* at 48857. Accordingly, Virginia retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the submission for inclusion into the SIP. *See Union Elec. Co.* v. *EPA*, 427 U.S. at 265–66 (1976). Although national uniformity in consumer and commercial product regulations may have some benefit to the regulated community, EPA recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to Virginia's adoption of its AIM coatings rule. On March 28, 2001, the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including Virginia, which officially made available the OTC model rules, including the AIM coatings model rule. See the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has been included in administrative record of this final rulemaking. That MOU includes the following text, "WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other States and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings * * *." (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking).

Therefore, there is no validity to the commenters' assertion that Virginia failed to consult with EPA in the adoption of its AIM coatings rule. EPA was fully cognizant of the requirements of the Virginia AIM coatings rule before its formal adoption by Virginia.[5] For all these reasons, EPA disagrees that Virginia violated section 183(e)(9) in its adoption of the its AIM coatings rule, and disagrees that approval of the Virginia AIM coatings rule by EPA is in violation of or prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

C. *Comment:* The Virginia AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 184(c), and Approval of the SIP Revision Would, Itself, Violate that Section—The commenters believe the OTC violated Clean Air Act section 184(c)(1) by failing to "transmit" its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the Model Rule through the notice, comment and approval process required by Clean Air Act section 184(c)(2)–(4). The commenters assert that these purported violations of the Clean Air Act prevent Virginia from adopting the Virginia AIM coatings rule, and now prevent EPA from validly approving that rule as a revision to the Virginia SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that "the [OTC] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart." It is important to note that the OTC model AIM coatings rule was not developed pursuant to section 184(c)(1), which provision is only triggered "[u]pon petition of any State within a transport region established for ozone * * *." No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon State petition under section 184(e)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. Section 184 is a voluntary process and the OTC may opt for that process or another. This provision of the Act was not intended to prevent OTC's development of model rules which states may individually choose to adapt and adopt on their own, as Virginia did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its state rule from the OTC model, Virginia was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

As previously stated, on March 28, 2001, the OTC member states signed a MOU on regional control measures, including the AIM coatings model rule. The OTC did not develop recommendations to the Administrator for additional control measures. The MOU stated that implementing these rules will help attain and maintain the 1-hour standard for ozone and were therefore made available to the states for use in developing their own regulations.[6]

[5] While EPA reviewed the model AIM coatings rule and the draft Virginia version of that rule, EPA had no authority under the Clean Air Act to dictate the exact language or requirements of the rule. As explained previously, EPA's role is to review a state submission to ensure it meets the applicable criteria of section 110 generally, and, in the case of an AIM rule to ensure it is at least as stringent as the otherwise applicable Federal rule.

[6] The commenters argue that section 184 either does not require a formal petition to be triggered, or alternatively that the MOU between the OTC states qualifies as a "petition." With respect to their first argument, section 184(c) says that the OTC "may, after notice and opportunity for public comment, develop recommendations for additional control measures * * *" and that the recommendations shall be presented to the EPA Administrator. This mechanism is triggered "upon *petition* of any State with a transport region established for ozone, and based on a majority vote of the Governors on the Commission (or their designees) * * *." 42 U.S.C. 7511d(c)(1) (emphasis added). The clear and unambiguous language of the Act requires a petition and a vote. We reasonably interpret section 184(c), in light of the obligation to conduct a vote, to require the petition to be a manifestation of an express intent to invoke the

Even though the OTC did not develop the model AIM coatings rule pursuant to section 184(c)(1) of the Act, nevertheless it provided ample opportunity for OTC member and stakeholder comment by holding several public meetings concerning the model rules including the AIM coatings model rule. The sign-in sheets or agenda for four meetings held in 2000 and 2001 at which the OTC AIM coatings model was discussed (some of which reflect the attendance of a representative of the EPA and/or the commenters), have been placed in the administrative record for this final rulemaking.

D. *Comment:* The Virginia AIM Coatings Rule violates the Commerce Clause and the Equal Protection Clause of the U.S. Constitution—The commenters' title heading of this comment states that the Virginia AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution, but the text that follows that title heading provides no arguments or assertions to support this claim. In both the title heading and the text that follows, the commenters claim that the Virginia AIM coatings rule violates the Commerce Clause of Article I, Section 8, of the U.S. Constitution, because it allegedly imposes an unreasonable burden on interstate commerce. The commenters assert that because the Virginia AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule imposes unreasonable restrictions and burdens on the flow of coatings in interstate commerce. The commenters further claim that the burdens of the Virginia AIM coatings rule are excessive and outweigh the benefits of the rule. The commenters argue that EPA should disapprove the SIP revision on this basis.

Response: As indicated previously, the commenters provide no arguments or assertions as to the claim made in the title heading of this comment that the Virginia AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution (see pages 14–16 of the letter dated July 7, 2005 from the SWC to Docket ID No. VA151–5077, EPA Proposal to Approve SIP Revision Submitted by the Commonwealth of Virginia Concerning Architectural and Industrial Maintenance (AIM) Coatings). Moreover, the text of the comment following the title heading does not reference or even make mention of the Equal Protection Clause. Lastly, in no *other* comment submitted by the SWC on EPA's June 7, 2004 proposed approval of Virginia's AIM coatings rule is there any mention or reference to the Equal Protection Clause of the U.S. Constitution. EPA does not believe that any provision of the Virginia AIM rule violates the Equal Protection Clause of the U.S. Constitution.

Regarding the comment that Virginia's AIM coatings rule violates the Commerce Clause of the U.S. Constitution, EPA agrees with this comment only to the extent that it acknowledges that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenters' practical concerns caused by differing state regulations, but disagrees with the commenters' view that the Virginia's AIM coatings rule impermissibly impinges on interstate commerce. A state law may violate the Commerce Clause in two ways: (1) By explicitly discriminating between interstate and intrastate commerce; or (2) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The Virginia AIM coatings rule does not explicitly discriminate against interstate commerce because it applies evenhandedly to all coatings manufactured or sold for use within the state. At most, therefore, the Virginia AIM coatings rule could have an incidental impact on interstate commerce. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. *See, Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes when the burden on interstate commerce is "clearly excessive in relation to the putative local benefits." *Id.* at 142.

At the outset, EPA notes that it is unquestionable that Virginia has a substantial and legitimate interest in obtaining VOC emissions for the purpose of attaining the ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. *See, e.g., National Ambient Air Quality Standards for Ozone: Final Response to Remand*, 68 FR 614, 620–25 (January 6, 2003). Thus, the objective of Virginia in adopting the Virginia AIM coatings rule is to protect the public health of the citizens of Virginia. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g., Kassel* v. *Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g, Minnesota* v. *Clover Leaf Creamery, et al.*, 449 U.S. 456 (1981) (upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenters assert, without reference to any facts, that the Virginia AIM coatings rule imposes burdens and has impacts on consumers that are "clearly excessive in relation to the purported benefits * * *." By contrast, EPA believes that any burdens and impacts occasioned by the Virginia AIM coatings rule are not so overwhelming as to trump the state's interest in the protection of public health. First, the Virginia AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the Northern Virginia VOC Emissions Control Area designated in 9 VAC 5–20–206. The Commonwealth's rule excludes coatings sold or manufactured for use exclusively outside of the Northern Virginia VOC Emissions Control Area or for shipment to others. 9 VAC 5–40–7120 C. The Virginia AIM coatings rule cannot be construed to interfere with the transportation of coatings through the state en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g., Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1938).

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section 184(c) process. Further, any petition would need to be sufficient in its clarity to put members on notice of their obligation to hold a vote and fulfill the other provisions of the section 184 process. We do not believe that a document which in hindsight might be construed as an inadvertent opt-in to the voluntary section 184 process could be the petition affirmatively intended by the Act.

With respect to the argument that the MOU is in hindsight a "petition" triggering the section 184 rule development process, nothing in the record indicates that the OTC treated this MOU as a petition to initiate the section 184 process. This is not surprising because the MOU's plain language recites that the model rules had already been developed that by the time the MOU was signed ("WHEREAS * * * OTC developed final model rules for the following source categories* * *."). Under section 184(c) the petition initiates the voluntary section 184 rule development process. 42 U.S.C. 7511d(c)(1). The MOU, however, came near the end of the OTC's model rule development process. This is a strong indication that the OTC did not intend the AIM coatings rule, or the other rules recited in the MOU, to be subject to the section 184 process. By its failure to express an intention to trigger the section 184 rule development mechanism, we reject the argument that the MOU constitutes a section 184(c) petition. The MOU neither expressly nor inadvertently opted-in the OTC states to the section 184 process.

Second, the Virginia AIM coatings rule is not constructed in such a way that it has the practical effect of requiring extraterritorial compliance with the state's VOC limits. The Virginia AIM coatings rule only governs coatings manufactured or sold for use within the Northern Virginia VOC Emissions Control Area. The manufacturers of coatings in interstate commerce are not compelled to take any particular action, and they retain a range of options to comply with the rule, including, but not limited to: (1) Ceasing sales of nonconforming products in the Northern Virginia VOC Emissions Control Area ; (2) reformulating nonconforming products for sale in the Northern Virginia VOC Emissions Control Area and passing the extra costs on to consumers in that area; (3) reformulating nonconforming products for sale more broadly; (4) developing new lines of conforming products; or (5) entering into production, sales or marketing agreements with companies that do manufacture conforming products. Because manufacturers or sellers of coatings in other states are not forced to meet Virginia's regulatory requirements elsewhere, the rule does not impose the type of obligatory extraterritorial compliance that the courts have considered unreasonable. *See, e.g., NEMA* v. *Sorrell*, 272 F.3d 104 (2d Cir. 2000) (state label requirement for light bulbs containing mercury sold in that state not an impermissible restriction). It may be that the Virginia AIM coatings rule will have the effect of reducing the availability of coatings or increasing the cost of coatings within the Northern Virginia VOC Emissions Control Area, but courts typically view it as the prerogative of the state to make regulatory decisions with such impacts upon its own citizens. *NPCA* v. *City of Chicago*, 45 F.3d 1124 (7th Cir. 1994), *cert. denied*, 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means to meet objective, but that is up to the local government to decide).

Third, the burdens of the Virginia AIM coatings rule typically do not appear to fall more heavily on interstate commerce than upon intrastate commerce. The effect on manufacturers and retailers will fall on all manufacturers and retailers regardless of location if they intend their products for sale within the Northern Virginia VOC Emissions Control Area designated in 9 VAC 5–20–206, and does not appear to have the effect of unfairly benefitting in-state manufacturers and retailers. The mere fact that there is a burden on some companies in other states does not alone establish impermissible interference with interstate commerce. *See, Exxon Corp.* v. *Maryland*, 437 U.S. 117, 126 (1978).

In addition, EPA notes that courts do not typically find violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g., Oxygenated Fuels Assoc., Inc.* v. *Davis*, 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress); *NEMA* v. *Sorell*, 272 F.3d 104 (2d Cir. 2000) (RCRA's authorization of more stringent state regulations confers a "sturdy buffer" against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the Virginia AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CFR 59.400 *et seq.* Congress did not, however, intend section 183(e) to preempt additional state regulation of coatings, as is evident in section 183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See, e.g.*, the National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59.410, and the **Federal Register** which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intended to create such Federal preemption, it does so through explicit provisions. *See, e.g.*, section 209(a) of the Act, which pertains to state or local emissions standards for motor vehicles; and section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon "cooperative federalism," which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations creating a checkerboard of differing requirements would not be the best approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that Virginia and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under section 116 of the Act, states have the authority to do so, and significantly, many states in the Northeast have joined together to prepare and promulgate regulations more restrictive than the Federal AIM coatings rule to apply uniformly across that region. This regional collaboration provides regional uniformity of standards. Virginia may have additional burdens to insure compliance with its rule, but for purposes of this action, EPA presumes that Virginia takes appropriate actions to enforce it as necessary. EPA has no grounds for disapproval of the SIP revision based upon the commenters' Commerce Clause comment.

E. *Comment:* The Emission Limits and Compliance Schedule in the Virginia AIM Coatings Rule are Neither Necessary nor Appropriate to Meet Applicable Requirements of the Clean Air Act—The commenters claim that the Virginia AIM coatings rule is not "necessary or appropriate" for inclusion in the Virginia SIP, because EPA did not direct Virginia to achieve VOC reductions through the AIM coatings rule, but left it to the Commonwealth to decide how such reductions can be achieved. The commenters further claim that the Virginia AIM coatings rule is not necessary or appropriate for inclusion in the Virginia SIP because of the numerous alleged procedural and substantive failings on the part of VADEQ in promulgating the rule. The commenters assert that prior to proposing a SIP revision, the state must first provide reasonable notice and a

public hearing, thereby implying that Virginia failed to do so. The commenters also assert that in its rulemaking materials for the Virginia AIM coatings rule, the VADEQ claimed that it was "required" by EPA to pursue revisions to the Virginia AIM coatings rule (as opposed to other potential measures) thereby unduly narrowing the range of alternatives that the VADEQ considered. The commenters assert that VADEQ's position that revisions to the Virginia AIM coatings rule were required by EPA, and thus necessary, has no basis in fact.

Response: EPA disagrees with this comment. If fulfillment of the "necessary or appropriate" condition of section 110(a)(2)(A) required EPA first to determine that a measure was necessary or appropriate and then to require a state to adopt that measure, this condition would present a "catch 22" situation. EPA does not generally have the authority to require the State to enact and include in its SIP any particular control measure, even a "necessary" one.[7] However, under section 110(a)(2)(a) a control measure must be either "necessary *or* appropriate" (emphasis added); the use of the disjunctive "or" does not provide that a state must find that *only* a certain control measure *and no other measure* will achieve the required reduction. Rather, a state may adopt and propose for inclusion in its SIP any measure that meets the other requirements for approvability so long as that measure is at least an appropriate, though not exclusive, means of achieving emissions reduction. *See also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 264–266 (1976) (holding that "necessary" measures are those that meet the 'minimum conditions' of the Act, that a state "may select whatever mix of control devices it desires," even ones more stringent than Federal standard, to achieve compliance with a NAAQS, and that "the Administrator must approve such plans if they meet the minimum requirements" of section 110(a)(2) of the Act). Clearly, in light of the Act and the case law, EPA's failure to specify that a state adopt a specific control measure cannot dictate whether a specific measure is necessary or appropriate.

In this particular instance, Virginia needs reductions to satisfy the requirements for rate-of-progress (ROP) and attainment plans (including contingency measures) for the reclassified Metropolitan Washington DC severe 1-hour ozone nonattainment area. It is Virginia's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions needed to satisfy the ROP and attainment plan requirements for its 1-hour ozone severe nonattainment area. Because commenters might find it more necessary or appropriate to obtain the needed VOC emission reductions elsewhere is not a basis for EPA to disapprove the rule implementing Virginia's determination of the best approach to obtain the needed reductions.

EPA has reviewed the Commonwealth's February 23, 2004 SIP revision submission of the Virginia AIM coatings rule, and finds no indication of a claim by VADEQ that EPA "required" the Commonwealth to revise the Virginia AIM coatings rule. In its response to this same comment raised by the SWC during the Commonwealth's rule adoption process, the VADEQ responded that the proposed AIM rule was one of the control measures selected by the Metropolitan Washington Air Quality Committee in order to implement a regional plan for the Washington DC-MD-VA ozone nonattainment area, and did not respond that EPA "required" the proposed AIM coatings rule.

EPA also disagrees with the commenters' view of Virginia's public notice and hearing procedure. In its February 23, 2004 SIP revision submittal, the VADEQ includes a copy of the public notice published in the *Washington Times* announcing its intent to adopt the AIM coatings rule, and to hold two public hearings (providing date, time, venue), and instructions for submitting comments. That public notice states that it is being published in accordance with subsection 2.2–4007 of the Code of Virginia and section 110(a)(1) of the of the Federal Clean Air Act. The public notice's citation of section 110(a)(1) of the Act serves as Virginia's notification that the proposed revised VOC regulations would be revisions to the Virginia SIP. Indeed, from the documentation provided in its February 23, 2004 submittal and from the fact that both commenters testified and submitted written comments pursuant to the hearing and these published notices, EPA has determined that Virginia fulfilled the requirements of section 110(a) of the Act with respect to reasonable notice and a public hearing in connection with SIP revision submissions.

Virginia's February 23, 2004 SIP revision submittal provides evidence and certification that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law and constitution that are related to adoption of the plan. As noted in *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2004):

> [T]he CAA only requires that the states provide "necessary assurances that the State * * * will have adequate * * * authority under State (and as appropriate, local) law to carry out such implementation plan (and it is not prohibited by any provision of * * * State law from carrying out such implementation plan or portion thereof)." 42 U.S.C. 7410(a)(2)(E)(i). There is no statutory requirement that the EPA review SIP submissions to ensure compliance with state law * * *. Such a requirement would be extremely burdensome and negate the rationale for having the state provide the assurances in the first instance. The EPA is entitled to rely on a state's certification unless it is clear that the SIP violates state law, and proof thereof, such as a state court decision, is presented to EPA during the SIP approval process. 355 F.3d 817, n.11 at 830.

The commenters have offered no proof, such as a Commonwealth court decision, that Virginia's AIM coatings rule clearly violates local law. EPA therefore is relying on Virginia's certification that it had the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements of the Commonwealth's law that are related to adoption of this SIP revision.

F. *Comment:* EPA's Action to Approve or Disapprove Virginia's AIM Coatings Rule is a "Significant Regulatory Action" as defined by Executive Order 12866, 58 FR 51735 (September 30, 1993).

Response: EPA disagrees with this comment. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. The commenters allege that EPA's approval of the Virginia AIM coatings rule is a "significant regulatory action" because it meets several of the following criteria specified in Executive Order 12866: "[it will have] an annual effect on the economy of $100 million or more or [it will] adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

[7] As noted in *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997), EPA does have the authority within the mechanism created by section 184 of the Act to order states to adopt control measures recommended by the OTC, if EPA agrees with and approves that recommendation. 108 F.3d, n.3 at 1402. As we have previously stated, the OTC model AIM coatings rule was not developed pursuant to the section 184 mechanism; EPA therefore has no authority to order that Virginia or any other state adopt this measure in order to reduce VOC emissions.

safety, or State, local, or tribal governments or communities * * *." However, this action merely approves existing state law as meeting Federal requirements. EPA's approval of this SIP revision imposes no additional requirements beyond those imposed by state law. Accordingly, this action meets none of the criteria listed above. Any cost or any material adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities exist, if at all, due to Virginia's approval of its state AIM coatings rule, not by EPA's approval of that rule into the Virginia SIP. If EPA failed to act on the Virginia AIM coatings rule, the effects of the rule would not be changed because this rule went effect in Virginia on January 1, 2005. Nothing that EPA might do at this point in time alters that fact.

Furthermore, Virginia voluntarily adopted its version of the OTC model AIM coatings rule and, as the commenters themselves acknowledge, EPA legally could not impose this control measure on the State. *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997). EPA's approval of this state rule merely fulfills its statutory obligation under the Act to review SIP submissions and approve state choices, provided that they meet the criteria of the Clean Air Act.

G. *Comment:* The Virginia AIM Coatings Rule is Arbitrary and Capricious—The commenters assert that the Virginia AIM coatings rule violates Virginia law as being arbitrary and capricious, because the record supporting Virginia's actions is deficient in numerous areas. First, the commenters allege that Virginia has not undertaken any independent cost analyses, and instead relied solely on information used by the CARB to support the suggested control measure (SCM). Second, the commenters assert that VADEQ failed to address any relevant differences between climatic conditions or the markets for the regulated products in Virginia and California. Third, the commenters allege that the analyses performed by the Commonwealth in adopting the Virginia AIM coatings rule are insufficient to satisfy Subsection 10.1—1307.E of the Code of Virginia. Finally, the commenters assert that Virginia's adoption of its AIM coatings rule is arbitrary and capricious because its does not include an averaging provision for inclusion in Virginia SIP as advocated by the commenters.

Response: EPA disagrees with this comment. The cost per ton figure determined by Virginia in its economic analysis, its decision to rely upon information from California and its decision whether to include averaging provisions in its final AIM coatings rule, are all decisions which fall within a state's purview, and issues regarding those decisions are rightly raised by interested parties to the state during its regulatory adoption process. The commenters raised the same issues in regard to Subsection 10.1–1307.E of the Code of Virginia in comments submitted to VADEQ during the Commonwealth's adoption process for its AIM coatings rule. The VADEQ responded that the analyses performed in support of its regulatory action to adopt the AIM coatings rule are adequate to satisfy the requirements of Subsection 10.1–1307.E of the Code of Virginia. Virginia's February 23, 2004 SIP revision submittal provides evidence and certification that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law and constitution that are related to adoption of the plan. (Please see EPA's response to Comment II. E.). *See BCCA Appeal Group* v. *EPA*, 355 F.3d 817, n.11 at 830 (EPA may rely on the state's certification that it has complied with applicable state requirements for promulgating a rule submitted as a revision to its SIP).

H. *Additional Comments Submitted to the OTC and Commonwealth of Virginia Included, by Reference, in the Comments Submitted to EPA on the June 7, 2004 Proposed Approval of Virginia's AIM Coatings Rule (69 FR 31780):*

(1) The NPCA alleges that its preferred alternative regulatory scheme would allegedly result in at least 70 percent of the emissions that would be secured by the Virginia AIM coatings rule while securing additional VOC reductions beyond the national AIM coatings rule. The NPCA comments that its proposal should be considered by Virginia as a viable alternative to the OTC model rule.

(2) The commenters request that the Virginia AIM coatings rule retain the Federal AIM coatings rule's VOC limits for the following subcategories: interior wood and semitransparent stains, interior wood sanding sealers, interior wood varnishes, interior wood primers, and porch, floor and deck coatings (opaque).

(3) The commenters have concerns with the proposed standards for certain paints and coatings, *e.g.*, interior wood clear and semi-transparent stains, interior wood varnishes, interior wood sanding sealers, exterior wood primers, and floor coatings. The commenters assert that the proposed AIM coatings regulation is based upon the inaccurate assumption that compliant coatings are available or can be developed which will satisfy customer requirements and meet all of the performance requirements of these categories. The commenters contend that such coatings are not effectively within the limits of current technology and that this inaccurate assumption will result in increased and earlier repainting which can damage floors due to seasonal variations in temperature and humidity.

(4) The commenters contend that the increase in emissions resulting from the performance issues and consequential repainting have not been considered.

(5) A further comment contends that due to Virginia's climate, the added costs of heating trucks and warehouses to transport and store coatings will adversely impact manufacturers, shippers, end users and on society in the form of more energy consumption.

Response: With regard to the comments submitted to the OTC, and to Virginia on its proposed AIM coatings rule and subsequently, by reference, to EPA on its June 7, 2004 proposed approval of Virginia's February 23, 2004 SIP revision request, it is important to understand EPA's role with regard to review and approval or disapproval of rules submitted by states as SIP revisions. EPA can only take action upon the final adopted version of a state's regulation as submitted by that state in its SIP revision request. It is not within EPA's authority, by its rulemaking on the SIP revision or otherwise, to change or modify the text or requirements of a state regulation. Therefore, EPA cannot modify Virginia's AIM coatings regulation as recommended in the comments.

The Commonwealth's reliance upon both technical and cost analyses from California in its decisions with regard to the provisions in its final AIM coatings rule are all decisions which fall within a state's purview, and issues regarding those decisions are rightfully raised by interested parties to the State during its regulatory adoption process. Therefore, it was appropriate that the commenters commented to the Commonwealth on these matters during the adoption of its AIM coatings rule. A complete SIP revision submission from a state includes a compilation of timely comments properly submitted to the state on the proposed SIP revision and the state's response thereto (40 CFR part 51, appendix V, 2.1 (h)). EPA has reviewed Virginia's February 23, 2004 SIP revision submittal and has determined that the commenters'

comments on those issues they have incorporated by reference on this rulemaking, along with the Commonwealth's responses to those issues, are included therein. Virginia's February 23, 2004 SIP revision submittal provides evidence and certification that it that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law that are related to adoption of the plan. (*See* EPA's response to Comment II. E.). In the context of a SIP approval, EPA's review of these state decisions is limited to whether the SIP revision meets the minimum criteria of the Act. Provided that the rule adopted by the state satisfies those criteria, EPA must approve such a SIP revision. *See Union Elec. Co.* v. *EPA; BCCA Appeal Group* v. *EPA*, 355 F.3d 817, n.11 at 830.

III. General Information Pertaining to SIP Submittals From Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding section 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Virginia SIP revision for the control of VOC emissions from AIM coatings submitted on February 23, 2004. The Virginia AIM coatings rule is part of the Virginia's strategy to satisfy the requirements of a severe ozone nonattainment area and to achieve and maintain the ozone standard in the Metropolitan Washington, DC ozone nonattainment area.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the Virginia AIM coatings rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding entries for Chapter 40, Part II, Article 49. The table in paragraph (e) is amended by adding an entry for "Documents Incorporated by Reference" after the existing entries for "Documents Incorporated by Reference." The amendments read as follows:

52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 40 Existing Stationary Sources				
*	*	*	*	*
Part II Emission Standards				
*	*	*	*	*
Article 49 Architectural and Industrial Maintenance Coatings (Rule 4–49)				
5–40–7120	Applicability and Designation of Affected Facility.	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7130	Definitions	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7140	Standard for Volatile Organic Compounds	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7150	Container Labeling Requirements	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7160	Standard for Visible Emissions	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7170	Standard for Fugitive Dust/Emissions	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7200	Compliance	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7210	Compliance Schedules	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7220	Test Methods and Procedures	3/24/04	5/12/05 [Insert page number where the document begins].	
5–40–7230	Notification, Records and Reporting	3/24/04	5/12/05 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Documents Incorporated by Reference.	Northern Virginia VOC Emissions Control Area designated in 9 VAC 5–20–206.	3/24/04	5/12/05 [Insert page number where the document begins].	9 VAC 5–20–21, Sections E.1.a.(7)., E.4.a.(12) through a.(17), E.10., E.11., E.13.a.(1), and E.13.a.(2).
*	*	*	*	*

[FR Doc. 05–9313 Filed 5–11–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD166–3112; FRL–7910–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From AIM Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to the control of volatile organic compounds (VOC) emissions from architectural and industrial maintenance (AIM) coatings. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

DATES: *Effective Date:* This final rule is effective on June 13, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 2004 (69 FR 29674), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a Maryland regulation pertaining to the control of VOC from AIM coatings. The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on March 19, 2004. Other specific requirements of Maryland's SIP revision for AIM coatings and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On June 24, 2004. EPA received adverse comments on its May 25, 2004 proposed rulemaking. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the Maryland AIM coatings rule. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with Maryland and manufacturers to explore ways to ensure that the rule achieves the intended VOC emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule.

II. Public Comments and EPA Responses

A. The National Paint and Coatings Association (NPCA) is one of commenters on EPA's May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule. The NPCA has submitted to EPA, by reference, the same comments it previously submitted to MDE on Maryland's proposed version of its AIM coatings rule during the State's adoption process. The NPCA also commented that it endorses and incorporates by reference the comments submitted by the Sherwin Williams Company (SWC) to EPA on the May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule. The following summarizes the comments presented to Maryland by the NPCA during the State's adoption of its AIM rule and EPA's response to those comments as they pertain to its May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule:

1. *Comment:* The NPCA has developed an alternative proposal to the Maryland AIM coatings rule (Ozone Transport Commission (OTC) model rule). The NPCA believes that its proposal should be considered by MDE as a viable alternative to the OTC model rule.

2. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to include an averaging program, modeled after the California Air Resources Board (CARB) program, and administered on a regional basis.

3. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule

to include a coating-specific variance provision.

4. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to include a scheduled technology assessment by MDE and/or OTC AIM workgroup on the appropriateness of implementing all of the future VOC limits.

5. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to make the reporting requirements consistent with other OTC states' AIM coating rules by amending section 13: Reporting Requirements, to eliminate the annual reports for clear brushing lacquers, rust preventive coatings, and specialty primers, sealers and undercoaters. The NPCA recommends MDE replace this requirement with one that only requires the manufacturers to maintain records of the sales of these AIM products and report these sales only when requested by MDE.

6. *Comment:* NPCA suggests revising the Maryland AIM coatings rule to make section 06. Most Restrictive VOC limit, consistent with other OTC states' rules by adding the following four additional categories to the list: Calcimine recoaters, impacted immersion coatings, nuclear coatings, and thermoplastic rubber coating and mastic.

7. *Comment:* The NPCA suggests revising the Maryland AIM coatings rule to eliminate the special labeling requirement for conversion varnishes which requires manufacturers to prominently display the words "For Professional Use Only" on each can of conversion varnish to make the labeling requirements of the Maryland AIM coatings rule consistent with other OTC states' AIM rules.

Response: With regard to the comments submitted by the NPCA to Maryland on its proposed AIM coatings rule and subsequently, by reference, to EPA on its May 25, 2004 proposed approval of Maryland's March 19, 2004 SIP revision request, it is important to understand EPA's role with regard to review and approval or disapproval of rules submitted by states as SIP revisions. EPA can only take action upon the final adopted version of a state's regulation as submitted by that state in its SIP revision request. It is not within EPA's authority, by its rulemaking on the SIP revision or otherwise, to change or modify the text or requirements of a state regulation. Therefore, EPA cannot modify Maryland's AIM regulation as suggested in the comments submitted by the NPCA. Prior to approving a SIP revision request submitted by a state, EPA reviews the submission to ensure that the state provided the opportunity for comment and held a hearing(s) on the proposed state regulation that is at issue in the SIP revision pursuant to section 110(a) of the Act. In this case, Maryland's March 19, 2004 submission of its AIM coatings rule to EPA includes the necessary documentation to demonstrate that it met these requirements. Maryland's March 19, 2004 SIP revision submission is included in the docket of this rulemaking. A complete SIP revision submission from a state includes copies of timely comments properly submitted to the state on the proposed SIP revision and the state's responses to those comments. Maryland's March 19, 2004 submission of its AIM coatings rule as a SIP revision to EPA properly includes both the comments submitted on its proposed AIM coatings rule and Maryland's responses to those comments.

B. As noted previously, SWC is the other commenter on EPA's May 25, 2004 NPR proposing approval of Maryland's AIM coatings rule. As stated previously, the comments from NPCA incorporate by reference and endorse these comments submitted by SWC. The following summarizes the comments submitted by SWC and the NPCA (by reference) and EPA's responses:

1. *Comment:* Using Flawed Data Violates the Data Quality Objectives Act and Administrative Procedures Act—The commenters assert that the Maryland AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act ("DQOA") (Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)). The data at issue is contained in what the commenters characterize as a "study prepared by E.H. Pechan & Associates" (Pechan Study) in 2001. The alleged flaws relate to projected emissions reductions calculated in the Pechan Study. The commenters assert that certain of the underlying data and data analyses are allegedly "unreproduceable." Further, the commenters assert that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to the Federal AIM coatings rule, than was calculated in the Pechan Study (54 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenters state that EPA must not approve the proposed Maryland AIM coatings rule as a SIP revision.[1]

Response: EPA disagrees with this comment. What the commenters characterize as the Pechan Study is not at issue in this rulemaking. The Pechan Study was not submitted to EPA by Maryland in its request that EPA approve its AIM coatings rule.[2] The validity of the Pechan Study data is not at issue because Maryland did not request approval of a quantified ount of VOC emission reduction from the enactment of its regulation.[3] Rather, this AIM coatings regulation has been submitted by Maryland, and is being considered by EPA, on the basis that it strengthens the existing Maryland SIP. The commenters do not dispute that the Maryland AIM coatings rule will, in fact, reduce VOC emissions.

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs for each designated "air quality control region" within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and *must approve* the SIP revision if it is found to meet the minimum requirements of the Act. *See* section 110(k)(3) of the Act, 42 U.S.C. 7410(k)(3); *see also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act

[1] One of the commenters has submitted a "Request for Correction of Information" (RFC) dated June 2, 2004, to EPA's Information Quality Guidelines Office in Washington, DC which raises substantively similar issues to those raised by this comment. By letter dated February 25, 2005 from Robert Brenner, Principal Deputy Assistant Administrator to the Counsel for Sherwin Williams Company, EPA responded separately to the RFC. A copy of that letter is included in the administrative record for this final rulemaking.

[2] The commenters concede that the Pechan Study and related spreadsheet are not part of the record submitted to EPA by Maryland. They assert, however, that there are references to the Pechan Study in other materials submitted by Maryland. The commenters also assert that one of them submitted a copy of the Pechan Study as an exhibit to its comments; however, EPA's review of the commenter's submission indicates that the Pechan Study was not submitted to EPA. Whether or not the Pechan Study, or data from that study, was submitted to EPA does not alter our analyses or conclusion, described herein, that the Pechan Study is not relevant in this rulemaking.

[3] The commenters assert that there is a "discrepancy as to whether Maryland has requested credits or intends to do so in the near future." EPA is not aware of any discrepancy. Maryland did not request any amount of VOC reduction credits in the SIP revision that is the subject of this rulemaking.

expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. *See* section 116 of the Act, 42 U.S.C. 7416. EPA must disapprove state plans, and revisions thereto, that are less stringent than a standard or limitation provided by Federal law. *See* section 110(k) of the Act, 42 U.S.C. 7410(k); *see also Duquesne Light* v. *EPA*, 166 F.3d 609 (3d Cir. 1999).

The Pechan Study is not part of Maryland's submission in support of its AIM coatings rule. Because Maryland's March 19, 2004 submission does not seek approval of a specific amount of emissions reductions, the level of emissions reductions that might be calculable using data contained in the Pechan Study is irrelevant to whether EPA should approve this SIP revision.[4] The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that Maryland's AIM coatings rule be at least as stringent as the otherwise applicable Federal AIM coatings rule set forth at 40 CFR 59.400, subpart D.[5]

EPA has concluded that the Maryland AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenters' conclusion that the Maryland AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenters, *i.e.*, that the commenters' "better" data demonstrates that OTC Model AIM coatings rule achieves a 54 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule. Rather, EPA has determined that the Maryland AIM coatings rule is, on its face, more stringent than the Federal AIM coatings rule. As stated on page 1945, under "Comparison to Federal Standards" in the Maryland Bulletin, Volume 30, Issue 26 (December 26, 2003): "[T]his proposed action is more restrictive or stringent than the corresponding Federal standards * * *." Examples of categories for which Maryland's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule's VOC content limit for non-flat high gloss coatings is 380 grams/liter while the Maryland AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the Maryland AIM coatings rule's is 400 grams/liter. Examples of categories for which the Maryland AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for antenna coatings and low-solids coatings. In both rules the VOC content limits for these categories are 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, EPA believes that Maryland's AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule. Further, EPA has received no comments that the Maryland AIM coatings rule is less stringent than the Federal AIM coatings rule.

2. *Comment:* The MD AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 183(e)(9)—The commenters state that in 1998, after a seven-year rule development process, EPA promulgated its nationwide emission limitation for AIM coatings pursuant to Clean Air Act section 183(e). The commenters note that Maryland's AIM coatings rule seeks to impose numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenters assert that section 183(e)(9) requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenters believe that Maryland failed to engage in that required consultation, and that, therefore, (1) Maryland violated section 183(e)(9) in its adoption of the Maryland AIM coatings rule, and (2) approval of the AIM coatings rule by EPA would violate, and is, therefore, prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenters, section 183(e)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to "whether any other state or local subdivision has promulgated or is promulgating regulations or any products covered under [section 183(e)]." The commenters erroneously construe this as a requirement for permission rather than informational consultation. Further, the final Federal AIM coatings regulations at 40 CFR 59.410 explicitly provides that states and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. *See also* 63 FR 48848, 48884 (September 11, 1998). In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend section 183(e) to preempt any existing or future state rules governing VOC emissions from consumer and commercial products. *See id.* at 48857. Accordingly, MDE retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the submission for inclusion into the SIP. *See Union Elec. Co.* v. *EPA*, 427 U.S. at 265–66 (1976). Although national uniformity in consumer and commercial product regulations may have some benefit to the regulated community, EPA recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to Maryland's adoption of its AIM coatings rule. On March 28, 2001 the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including Maryland, which officially made available the OTC model rules, including the AIM coatings model rule. See the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has

[4] After submission of a request for approval of a quantified amount of emissions reductions credit due to the AIM coatings rule by the State, EPA will evaluate the credit attributable to the rule. Whatever methodology and data the State uses in such a request will become ripe for public comment.

[5] The commenters assert that "it makes no difference whether Maryland is asking for credits at this time for there to be a Data Quality Act challenge," apparently because the fact that material from the Pechan Study appears in the rulemaking docket for this action, there is "dissemination of flawed data." This ignores that fact that EPA is taking no stance on the Pechan Study and its underlying data. That study is irrelevant to our analysis as to whether the Maryland AIM rule is approvable as a measure meeting the requirements of section 110 of the Act that strengthens the Maryland SIP. EPA is not required to address irrelevant material merely because it is in the rulemaking docket. Section 307(d)(6)(B) of the CAA (which aplies to, among other things, SIP revisions, *see* 42 U.S.C. 7607(d)(1)(B)), requires EPA to respond to "each of the significant comments, criticisms, and new data submitted * * * during the public comment period." 42 U.S.C. 7607(d)(6)(B). The United States Supreme Court has held that "irrelevant" matter in the docket is not "significant" as that term is used in the CAA, and EPA has no duty to respond to them. *See Whitman* v. *Amer. Trucking Ass'ns., Inc.*, 531 U.S. 457, n. 2 at 470 (2001). With respect to the Pechan data, we are not disseminating it, but we rather are fulfilling our statutory role as custodian of a docket containing irrelevant material submitted by third parties.

been included in administrative record of this final rulemaking. That MOU includes the following text, "WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other States and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings * * *." (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking).

Therefore, there is no validity to the commenters' assertion that Maryland failed to consult with EPA in the adoption of its AIM coatings rule. EPA was fully cognizant of the requirements of the Maryland AIM coatings rule before its formal adoption by Maryland.[6] For all these reasons, EPA disagrees that Maryland violated section 183(e)(9) in its adoption of the its AIM coatings rule, and disagrees that approval of the Maryland AIM coatings rule by EPA is in violation of or prohibited by section 110(a)(2)(A) and (a)(2)(E) of the Act.

3. *Comment:* The MD AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 184(c), and Approval of the SIP Revision Would, Itself, Violate That Section—The commenters believe the OTC violated Clean Air Act section 184(c)(l) by failing to "transmit" its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the Model Rule through the notice, comment and approval process required by Clean Air Act section 184(c)(2)–(4). The commenters assert that these purported violations of the Clean Air Act prevent Maryland from adopting the Maryland AIM coatings rule, and now prevent EPA from validly approving them as a revision to the Maryland SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that "the [OTC] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart." It is important to note that the OTC model AIM coatings rule was not developed pursuant to section 184(c)(1), which provision is only triggered "[u]pon petition of any State within a transport region established for ozone * * *." No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon State petition under section 184(e)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. Section 184 is a voluntary process and the OTC may opt for that process or another. This provision of the Act was not intended to prevent OTC's development of model rules which states may individually choose to adapt and adopt on their own, as Maryland did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its state rule from the OTC model, Maryland was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

As previously stated, on March 28, 2001, the OTC member states signed a MOU on regional control measures, including the AIM coatings model rule. The OTC did not develop recommendations to the Administrator for additional control measures. The MOU stated that implementing these rules will help attain and maintain the 1-hour standard for ozone and were therefore made available to the states for use in developing their own regulations.[7]

Even though the OTC did not develop the model AIM coatings rule pursuant to section 184(c)(1) of the Act, nevertheless it provided ample opportunity for OTC member and stakeholder comment by holding several public meetings concerning the model rules including the AIM coatings model rule. The sign-in sheets or agenda for four meetings held in 2000 and 2001 at which the OTC AIM coatings model was discussed (some of which reflect the attendance of a representative of the EPA and/or the commenters), have been placed in the administrative record for this final rulemaking.

4. *Comment:* The MD AIM Coatings Rule Violates the Commerce Clause and the Equal Protection Clause of the U.S. Constitution—The commenters' title heading of this comment states that the Maryland AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution, but the text that follows that title heading provides no arguments or assertions to support this claim. In both the title heading and the text that follows, the commenters claim that the Maryland AIM coatings rule violates the Commerce Clause of Article I, section 8, of the U.S. Constitution, because it allegedly imposes an unreasonable burden on interstate commerce. The commenters assert that because the Maryland AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule imposes unreasonable restrictions and burdens on the flow of coatings in interstate commerce. The commenters further clarify that the burdens of the Maryland AIM coatings rule are excessive and outweigh the benefits of the rule. The commenters argue that EPA should disapprove the SIP revision on this basis.

[6] While EPA reviewed the model AIM coatings rule and the draft Maryland version of that rule, EPA had no authority under the Clean Air Act to dictate the exact language or requirements of the rule. As explained previously, EPA's role is to review a state submission to ensure it meets the applicable criteria of section 110 generally, and, in the case of an AIM rule to ensure it is at least as stringent as the otherwise applicable Federal rule.

[7] The commenters argue that section 184 either does not require a formal petition to be triggered, or alternatively, that the MOU between the OTC states qualifies as a "petition." With respect to their first argument, section 184(c) says that the OTC "may, after notice and opportunity for public comment, develop recommendations for additional control measures * * *" and that the recommendations shall be presented to the EPA Administrator. This mechanism is triggered "upon petition of any State with a transport region established for ozone, and based on a majority vote of the Governors on the Commission (or their designees) * * *." 42 U.S.C. 7511d(c)(1) (emphasis added). The clear and unambiguous language of the Act requires a petition and a vote. We reasonably interpret section 184(c), in light of the obligation to conduct a vote, to require the petition to be a manifestation of an express intent to invoke the section 184(c) process. Further, any petition would need to be sufficient in its clarity to put members on notice of their obligation to hold a vote and fulfill the other provisions of the section 184 process. We do not believe that a document which in hindsight might be construed as an inadvertent opt-in to the voluntary section 184 process could be the petition affirmatively intended by the Act.

With respect to the argument that the MOU is in hindsight a "petition" triggering the section 184 rule development process, nothing in the record indicates that the OTC treated this MOU as a petition to initiate the section 184 process. This is not surprising because the MOU's plain language recites that the model rules had already been developed that by the time the MOU was signed ("WHEREAS * * * OTC developed final model rules for the following source categories * * *."). Under section 184(c) the petition initiates the voluntary section 184 rule development process. 42 U.S.C. 7511d(c)(1). The MOU, however, came near the end of the OTC's model rule development process. This is a strong indication that the OTC did not intend the AIM coatings rule, or the other rules recited in the MOU, to be subject to the section 184 process. By its failure to express an intention to trigger the section 184 rule development mechanism, we reject the argument that the MOU constitutes a section 184(c) petition. The MOU neither expressly nor inadvertently opted-in the OTC states to the section 184 process.

Response: As indicated previously, the commenters provide no arguments or assertions as to the claim made in the title heading of this comment that the Maryland AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution (see pages 12–13 of the letter dated June 24, 2005 from SWC to Docket ID No. MD166–3111, EPA Proposal To Approve SIP Revision Submitted by the State of Maryland Concerning Architectural and Industrial Maintenance (AIM) Coatings). Moreover, the text of the comment following the title heading does not reference or even make mention of the Equal Protection Clause. Lastly, in no other comment submitted by SW on EPA's May 25, 2004 proposed approval of Maryland's AIM coatings rule is there any mention or reference to the Equal Protection Clause of the U.S. Constitution. EPA does not believe that any provision of the Maryland AIM coatings rule violates the Equal Protection Clause of the U.S. Constitution.

Regarding the comment that Maryland's AIM coatings rule violates the Commerce Clause of the U.S. Constitution, EPA agrees with this comment only to the extent that it acknowledges that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenters' practical concerns caused by differing state regulations, but disagrees with the commenters' view that the Maryland AIM coatings rule impermissibly impinges on interstate commerce. A state law may violate the Commerce Clause in two ways: (i) By explicitly discriminating between interstate and intrastate commerce; or (ii) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The Maryland AIM coatings rule does not explicitly discriminate against interstate commerce because it applies evenhandedly to all coatings manufactured or sold for use within the state. At most, therefore, the Maryland AIM coatings rule could have an incidental impact on interstate commerce. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. *See, Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes when the burden on interstate commerce is "clearly excessive in relation to the putative local benefits." *Id.* at 142.

At the outset, EPA notes that it is unquestionable that Maryland has a substantial and legitimate interest in obtaining VOC emissions for the purpose of attaining the ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. *See, e.g., National Ambient Air Quality Standards for Ozone: Final Response to Remand*, 68 FR 614, 620–25 (January 6, 2003). Thus, the objective of Maryland in adopting the Maryland AIM coatings rule is to protect the public health of the citizens of Maryland. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g., Kassel* v. *Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g, Minnesota* v. *Clover Leaf Creamery*, et al., 449 U.S. 456 (1981) (upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenters assert, without reference to any facts, that the Maryland AIM coatings rule imposes burdens and has impacts on consumers that are "clearly excessive in relation to the purported benefits * * *." By contrast, EPA believes that any burdens and impacts occasioned by the Maryland AIM coatings rule are not so overwhelming as to trump the state's interest in the protection of public health. First, the Maryland AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the state's own boundaries. The state's rule excludes coatings sold or manufactured for use outside the state or for shipment to others. COMAR 26.11.33.01(B)(1)(a) and (b). The Maryland AIM coatings rule cannot be construed to interfere with the transportation of coatings through the state en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g., Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1938).

Second, the Maryland AIM coatings rule is not constructed in such a way that it has the practical effect of requiring extraterritorial compliance with the state's VOC limits. The Maryland AIM coatings rule only governs coatings manufactured or sold for use within the state's boundaries. The manufacturers of coatings in interstate commerce are not compelled to take any particular action, and they retain a range of options to comply with the rule, including, but not limited to: (1) Ceasing sales of nonconforming products in Maryland; (2) reformulating nonconforming products for sale in Maryland and passing the extra costs on to consumers in that state; (3) reformulating nonconforming products for sale more broadly; (4) developing new lines of conforming products; or (5) entering into production, sales or marketing agreements with companies that do manufacture conforming products. Because manufacturers or sellers of coatings in other states are not forced to meet Maryland's regulatory requirements elsewhere, the rule does not impose the type of obligatory extraterritorial compliance that the courts have considered unreasonable. *See, e.g., NEMA* v. *Sorrell*, 272 F.3d 104 (2d Cir. 2000) (state label requirement for light bulbs containing mercury sold in that state not an impermissible restriction). It may be that the Maryland AIM coatings rule will have the effect of reducing the availability of coatings or increasing the cost of coatings within the state, but courts typically view it as the prerogative of the state to make regulatory decisions with such impacts upon its own citizens. *NPCA* v. *City of Chicago*, 45 F.3d 1124 (7th Cir. 1994), *cert. denied*, 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means to meet objective, but that is up to the local government to decide).

Third, the burdens of the Maryland AIM coatings rule typically do not appear to fall more heavily on interstate commerce than upon intrastate commerce. The effect on manufacturers and retailers will fall on all manufacturers and retailers regardless of location if they intend their products for sale within Maryland, and does not appear to have the effect of unfairly benefitting in-state manufacturers and retailers. The mere fact that there is a burden on some companies in other states does not alone establish impermissible interference with interstate commerce. *See, Exxon Corp.* v. *Maryland*, 437 U.S. 117, 126 (1978).

In addition, EPA notes that courts do not typically find violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g., Oxygenated Fuels Assoc., Inc.* v. *Davis*, 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress);

NEMA v. *Sorell*, 272 F.3d 104 (2d Cir. 2000) (RCRA's authorization of more stringent state regulations confers a "sturdy buffer" against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the Maryland AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CFR 59.400 *et seq.* Congress did not, however, intend section 183(e) to pre-empt additional state regulation of coatings, as is evident in section183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See, e.g.*, the National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59.410, and the **Federal Register** which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intended to create such Federal preemption, it does so through explicit provisions. *See, e.g.*, section 209(a) of the Act, which pertains to state or local emissions standards for motor vehicles; and section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon "cooperative federalism," which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations creating a checkerboard of differing requirements would not be the best approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that Maryland and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under section 116 of the Act, states have the authority to do so, and significantly, many states in the Northeast have joined together to prepare and promulgate regulations more restrictive than the Federal AIM coatings rule to apply uniformly across that region. This regional collaboration provides regional uniformity of standards. Maryland may have additional burdens to insure compliance with its rule, but for purposes of this action, EPA presumes that Maryland take appropriate actions to enforce it as necessary. EPA has no grounds for disapproval of the SIP revision based upon the commenters' Commerce Clause comment.

5. *Comment:* The MD AIM Coatings Rule Is Arbitrary and Capricious Because the Record Supporting It Is Deficient—The commenters assert that the Maryland AIM coatings rule violates the Maryland law as being arbitrary and capricious, because the record supporting Maryland's actions is deficient in numerous areas. First, the commenters allege that MDE has not undertaken any independent cost analyses, and instead relied solely on information used by CARB to support the suggested control measure (SCM). Second, the commenters assert that MDE failed to address any relevant differences between climatic conditions or the markets for the regulated products in Maryland and California. Finally, the commenters assert that Maryland's adoption of its AIM coatings rule is arbitrary and capricious because its does not include an averaging provision for inclusion in Maryland SIP as advocated by the commenters.

Response: EPA disagrees with this comment. The cost per ton figure determined by Maryland in its economic analysis, its decision to rely upon information from California and its decision whether to include averaging provisions in its final AIM coatings rule, are all decisions which fall within a state's purview, and issues regarding those decisions are rightly raised by interested parties to the state during its regulatory adoption process. Maryland's March 19, 2004 SIP revision submittal provides evidence that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law that are related to adoption of the plan. As noted in *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2004):

> [T]he CAA only requires that the states provide "necessary assurances that the State * * * will have adequate * * * authority under State (and as appropriate, local) law to carry out such implementation plan (and it is not prohibited by any provision of * * * State law from carrying out such implementation plan or portion thereof)." 42 U.S.C. 7410(a)(2)(E)(i). There is no statutory requirement that the EPA review SIP submissions to ensure compliance with state law * * *. Such a requirement would be extremely burdensome and negate the rationale for having the state provide the assurances in the first instance. The EPA is entitled to rely on a state's certification unless it is clear that the SIP violates state law, and proof thereof, such as a state court decision, is presented to EPA during the SIP approval process. 355 F.3d 817, n.11 at 830.

The commenters have offered no proof, such as a state court decision, that Maryland's AIM coatings rule clearly violates local law. EPA therefore is relying on Maryland's certification that it had the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law that are related to adoption of this SIP revision.

6. *Comment:* The Emission Limits and Compliance Schedule in the MD AIM Coatings Rule Are Neither Necessary nor Appropriate To Meet Applicable Requirements of the Clean Air Act—The commenters claim that the Maryland AIM coatings rule is not "necessary or appropriate" for inclusion in the Maryland SIP, because EPA did not direct Maryland to achieve VOC reductions through the AIM coatings rule, but left it to the State to decide how such reductions can be achieved. The commenters further claim that the Maryland AIM coatings rule is not necessary or appropriate for inclusion in the Maryland SIP because of the numerous alleged procedural and substantive failings on the part of MDE in promulgating the rule. The commenters assert that prior to proposing a SIP revision, the state must first provide reasonable notice and a public hearing, thereby implying that Maryland failed to do so.

Response: EPA disagrees with this comment. If fulfillment of the "necessary or appropriate" condition of section 110(a)(2)(A) required EPA first to determine that a measure was

necessary or appropriate and then to require a state to adopt that measure, this condition would present a "catch 22" situation. EPA does not generally have the authority to require the State to enact and include in its SIP any particular control measure, even a "necessary" one.[8] However, under section 110(a)(2)(a) a control measure must be either "necessary *or* appropriate" (emphasis added); the use of the disjunctive "or" does not provide that a state must find that only a certain control measure and no other measure will achieve the required reduction. Rather, a state may adopt and propose for inclusion in its SIP any measure that meets the other requirements for approvability so long as that measure is at least an appropriate, though not exclusive, means of achieving emissions reduction. *See also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 264–266 (1976) (holding that "necessary" measures are those that meet the 'minimum conditions' of the Act, that a state "may select whatever mix of control devices it desires," even ones more stringent than Federal standard, to achieve compliance with a NAAQS, and that "the Administrator must approve such plans if they meet the minimum requirements" of section 110(a)(2) of the Act). Clearly, in light of the Act and the case law, EPA's failure to specify that state adopt a specific control measure cannot dictate whether a specific measure is necessary or appropriate.

In this particular instance, EPA identified an emission reduction shortfall associated with Maryland's 1-hour ozone attainment demonstration SIPs for the Baltimore and Philadelphia areas, and required Maryland (and Delaware, New Jersey and Pennsylvania in the case of the Philadelphia area) to address the shortfalls (*See*, 64 FR 70460 (December 16, 1999) and 66 FR 586 (January 3, 2001)). Maryland also needs reductions to satisfy the requirements for rate-of-progress (ROP) and attainment plans (including contingency measures) for the reclassified Metropolitan Washington DC severe 1-hour ozone nonattainment area. It is the State's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions needed to satisfy the ROP and attainment plan requirements for its 1-hour ozone severe nonattainment areas. Because commenters might find it more necessary or appropriate to obtain the needed VOC emission reductions elsewhere is not a basis for EPA to disapprove the rule implementing Maryland's determination of the best approach to obtain the needed reductions.

EPA also disagrees with the commenters' view of Maryland's public notice and hearing procedure. In its March 19, 2004 SIP revision submittal, the MDE included copies of the public notices published in six newspapers throughout the State of Maryland, including the Baltimore Sun and Washington Post, announcing its intent to adopt the AIM coatings rule, to submit the rule to EPA as a SIP revision, and to hold a public hearing (providing date, time, venue), and instructions for submitting comments. From the documentation provided in its March 19, 2004 submittal and from the fact that both commenters testified and submitted written comments pursuant to the hearing and these published notices, EPA believes that Maryland fulfilled the requirements of section 110(a) of the Act with respect to reasonable notice and a public hearing in connection with SIP revision submissions. As stated previously, Maryland's March 19, 2004 SIP revision submittal provides evidence that it has the legal authority to adopt its AIM coatings rule and that it has followed all of the requirements in the State law and constitution that are related to adoption of the plan (see EPA's response to Comment B.5.). *See BCCA Appeal Group* v. *EPA*, 355 F.3d 817, n.11 at 830. (EPA may rely on the state's certification that it has complied with applicable state requirements for promulgating a rule submitted as a revision to its SIP.)

7. *Comment:* The commenters claim that EPA's action to approve or disapprove Maryland's AIM coatings rule is a "significant regulatory action" as defined by Executive Order 12866, 58 FR 51735 (September 30, 1993).

Response: EPA disagrees with this comment. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. The commenters allege that EPA's approval of the Maryland AIM coatings rule is a "significant regulatory action" because it meets several of the following criteria specified in Executive Order 12866: "[it will have] an annual effect on the economy of $100 million or more or [it will] 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 * * *." However, this action merely approves existing state law as meeting Federal requirements. EPA's approval of this SIP revision imposes no additional requirements beyond those imposed by state law. Accordingly, this action meets none of the criteria listed above. Any cost or any material adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities exist, if at all, due to Maryland's approval of its state AIM coatings rule, not by EPA's approval of that rule into the Maryland SIP. If EPA failed to act on the Maryland AIM coatings rule, the effects of the rule would not be changed because this rule went effect in Maryland on January 1, 2005. Nothing that EPA might do at this point in time alters that fact.

Furthermore, Maryland voluntarily adopted its version of the OTC model AIM coatings rule and, as the commenters themselves acknowledge, EPA legally could not impose this control measure on the State. *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997). EPA's approval of this state rule merely fulfills its statutory obligation under the Act to review SIP submissions and approve state choices, provided that they meet the criteria of the Clean Air Act.

III. Final Action

EPA is approving the Maryland SIP revision for the control of VOC emissions from AIM coatings rule submitted on March 19, 2004. The Maryland AIM coatings rule is part of Maryland's strategy to satisfy the requirements of its severe ozone nonattainment areas and to achieve and maintain the ozone standard throughout the State of Maryland.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

[8] As noted in *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997), EPA does have the authority within the mechanism created by section 184 of the Act to order states to adopt control measures recommended by the OTC, if EPA agrees with and approves that recommendation. 108 F.3d, n.3 at 1402. As we have previously stated, the OTC model AIM coatings rule was not developed pursuant to the section 184 mechanism; EPA therefore has no authority to order that Maryland or any other state adopt this measure in order to reduce VOC emissions.

Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to Maryland's AIM coatings rule, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding entries for COMAR 26.11.33 through 26.11.33.14 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
	26.11.33 Architectural Coatings			
26.11.33.01	Applicability and Exemptions	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.02	Test Methods—Incorporation by Reference	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.03	Definitions	3/29/04	5/12/05 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.33.04	General Standard—VOC Content Limits	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.05	VOC Content Limits	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.06	Most Restrictive VOC Limit	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.07	Painting Restrictions	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.08	Thinning	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.09	Rust Preventive Coatings	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.10	Coatings Not Listed in Regulation .05	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.11	Lacquers	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.12	Container Labeling Requirements	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.13	Reporting Requirements	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.14	Compliance Provisions and Test Methods	3/29/04	5/12/05 [Insert page number where the document begins].	

* * * * *

[FR Doc. 05–9314 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–MD–0001; R03–OAR–2004–VA–0005; FRL–7909–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland and by the Commonwealth of Virginia. These revisions establish a number of non-regulatory measures for which Maryland and Virginia seek SIP credit in rate-of-progress and attainment planning for the Metropolitan Washington, DC 1-hour ozone nonattainment area (the Washington area). The intended effect of this action is to approve SIP revisions submitted by Maryland and Virginia which establish certain non-regulatory measures. The non-regulatory measures include use of low-or-no-volatile organic compound (VOC) content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies).

DATES: This final rule is effective on June 13, 2005.

ADDRESSES: EPA has established a docket for each of the SIP revisions subject to this action under Regional Material in EDocket (RME) ID Numbers R03–OAR–2004–MD–0001 and R03–OAR–2004–VA–0005. All documents in the docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2004 (69 FR 76889), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland and for the Commonwealth of Virginia. The NPR proposed approval of non-regulatory measures that include use of low-or-no-VOC content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies). On February 19, 2004 and February 25, 2004, respectively, the Maryland Department of the Environment (MDE) and the Virginia Department of Environmental Quality (VA DEQ) each submitted the formal revisions to their SIPs.

II. Summary of SIP Revision

The States submitted program descriptions that projected VOC and nitrogen oxides (NO_X) tons per day (TPD) emission reductions attributable to each specific measure. Those estimates are provided in Table 1.

TABLE 1.—EMISSION REDUCTIONS CREDITABLE FROM VOLUNTARY EMISSION REDUCTION PROGRAM MEASURES FOR THE METROPOLITAN WASHINGTON DC AREA

Measure	State	VOC TPD	NO_X TPD	Implementation date
Gas Can Replacement Program:				
Maryland National Capital Parks & Planning Commission, Prince George's County	MD	0.0027		4/2005
Montgomery County		0.00088		12/2004
Prince George's County		*0.00231*		1/2004
Maryland totals		0.00589	0.00	
Fairfax County	VA	0.00277		5/2005
City of Fairfax		0.00138		7/2004
City of Fairfax Contractors		0.00060		7/2004
Prince William County		0.00090		5/2005
Arlington County		*0.00210*		5/2005
Virginia totals		0.00565	0.00	
Total Maryland and Virginia Area-wide Reductions—Gas Can Replacement Program (Rounded).		0.01	0.00	
Sale of Reformulated Consumer Products	VA	3.00	0.00	1/2005
Low-VOC Paints Program:				
Prince George's County	MD	0.002		5/2005
Maryland National Capital Parks & Planning Commission, Prince George's County		0.006		12/2003
MDOT Traffic Marking Coatings		0.149		12/2003
Maryland totals		0.157	0.00	
Virginia totals—Fairfax County	VA	0.017		4/2004
Total Maryland and Virginia Area-wide Reduction—Low-VOC Paints Program (Rounded)		0.17	0.00	
Montgomery County Regional Wind Power Purchase	MD	0.00	0.05	12/2004
Auxiliary Power Units on Locomotives	VA	0.01	0.13	3/2004
Arlington County Regional Wind Power Purchase	VA	0.00	0.00	5/2005

A more detailed analysis of all these voluntary emission reduction program measures can be found in the Technical Support Document (TSD) for this action. That TSD is included in both the hard copy and E-docket for this rulemaking.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virgina

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial

danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding section 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements of the bundle of voluntary emission reduction program measures and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

IV. Public Comment

We received four sets of comments via letter and/or electronically during the public comment period. None of the comments were adverse to our proposed approval.

Three of the letters strongly supported the proposed approval of the nonregulatory measures in the Maryland and Virginia SIP revisions. Two of these letters observed that there is nothing voluntary about the State commitments in these SIP revisions even though these measures are titled "voluntary measures" by EPA. EPA agrees that the observation made in the comments is correct and reiterates EPA's policy regarding such measures. EPA's "voluntary measures" policies are to cover those emissions reduction strategies that are undertaken but are not made enforceable against the source through a traditional regulatory process or those strategies which are new or innovative. However, EPA ensures that the measures are enforceable against the state by requiring the state to commit to monitor the implementation and effectiveness of the measure and, where a reduction credit is sought by the SIP, to make-up any shortfall in emissions reductions.

The fourth letter was not opposed or adverse to the proposed action but rather asserted that there was a typographical error with regards to the emission reduction credit claimed by the Commonwealth of Virginia for the Arlington County wind power purchase measure. The comment letter asserts that the SIP sought no reduction credit from the measure. EPA has reexamined the SIP revision submitted by Virginia and agrees that EPA mistakenly proposed to credit the Arlington County wind power purchase measure with emission reduction credit. On page 7–78 of section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) in Virginia's February 25, 2004 SIP revision plainly states that "credits will not be awarded for purchases in Virginia jurisdictions."

Table 1 of this document reflects this change from Table 2 of the NPR.

V. Final Action

A. State of Maryland

EPA's review of this material indicates that Maryland's February 19, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is approving the following voluntary emission reduction program measures into the Maryland SIP: Montgomery County Regional Wind Power Purchase, Low-VOC Paints Program, and Gas Can Replacement Program. Specifically, EPA is approving those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Maryland on February 19, 2004. EPA is crediting the Maryland SIP with the emission reductions for these measures shown in Table 2 of this document for the Washington area.

B. Commonwealth of Virginia

EPA's review of this material indicates that Virginia's February 25, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is approving the following voluntary emission reduction program measures into the Virginia SIP: Low-VOC Paints Program, Sale of Reformulated Consumer Products, Gas Can Replacement Program, Remote Sensing Device Program, Arlington County Regional Wind Power Purchase, Auxiliary Power Units on Locomotives, Alternative Fueled Vehicle (AFV) Purchase Program, and Diesel Bus Retrofit Program. Specifically, EPA is approving those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area

Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Virginia on February 25, 2004. EPA is crediting the Virginia SIP with the emission reductions shown in Table 2 of this document for the Washington area.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland and Virginia voluntary emission reduction program measures may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 2, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In §52.1070, the table in paragraph (e) is amended by adding the entry for the Non-Regulatory Voluntary Emission Reduction Program at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Non-Regulatory Voluntary Emission Reduction Program.	Washington, DC severe 1-hour ozone nonattainment area.	2/19/04	5/12/05 [Insert page number where the document begins].	The nonregulatory measures found in section 7.6 and Appendix J of the plan.

Subpart VV—Virginia

■ 3. In §52.2420, the table in paragraph (e) is amended by adding the entry for the Non-Regulatory Voluntary Emission Reduction Program at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Non-Regulatory Voluntary Emission Reduction Program.	Washington, DC severe 1-hour ozone nonattainment area.	2/25/2004	5/12/05 [Insert page number where the document begins].	The nonregulatory measures found in section 7.6 and Appendix J of the plan.

[FR Doc. 05–9315 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA–01–003; FRL–7906–3]

Approval and Promulgation of State Implementation Plans; State of Washington; Spokane Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted to EPA by the State of Washington that consist of A Plan for Attaining Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) in the Spokane Serious CO Nonattainment Area and changes to the Washington State Inspection and Maintenance Program.

The EPA is also approving certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation of Spokane.

DATES: This final rule is effective on June 13, 2005.

ADDRESSES: EPA has established a docket for this action under Docket I.D. No. WA–01–003. Publicly available docket materials are available in hard copy at the Office of Air, Waste, and Toxics, Environmental Protection Agency, 1200 Sixth Ave., Seattle, Washington 98101. This Docket Facility is open from 8:30 a.m.–4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553–4273.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air, Waste and Toxics (OAWT–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101; telephone number: (206) 553–1086; fax number: 206–553–0110; e-mail address: *robinson.connie@epa.gov.*

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

I. Background Information

On March 8, 2005, EPA published in the **Federal Register**, a proposal to approve the Spokane, Washington CO serious Attainment Plan, revisions to the Washington State Inspection and Maintenance (I/M) Program, and certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation. See 70 FR 11179.

II. Public Comments on the Proposed Action

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the March 8, 2005, **Federal Register**. No comments were received on the proposed rulemaking. EPA is now taking final action on the SIP revisions consistent with the published proposal.

III. Final Action

In this action, the EPA is approving revisions to the Washington State Implementation Plan. Specifically, we are approving the following elements of the Spokane CO Attainment Plan, submitted on September 20, 2001 and November 22, 2004:

A. Procedural requirements, under section 110(a)(2) of the Act;

B. Base year emission inventory, under sections 172(c)(3) and 187(a)(1) and periodic inventories under 187(a)(5) of the Act;

C. Attainment demonstration, under section 187(a)(7) of the Act;

D. The TCM program under 187(b)(2)182(d)(1) and 108(f)(1)(A) of the Act;

E. VMT forecasts under section 187(a)(2)(A) of the Act;

F. Contingency measures under section 187(a)(3) of the Act;

G. The conformity budget under section 176(c)(2)(A) of the Act and § 93.118 of the transportation conformity rule (40 CFR part 93, subpart A),

H. Administrative Order No. DE 01AQIS–3285 and Order No. DE 01AQIS–3285, Amendment #1 relating to Kaiser Aluminum and Chemical Corporation, Mead Works.

We are also approving a SIP revision submitted on September 26, 2001, to two sections of Washington Administrative Code (WAC) 173–422, Motor Vehicle Emission Inspection, to provide an inspection schedule for motor vehicles between 5 and 25 years old.

A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the Spokane Serious Area Carbon Monoxide Plan and the WAC revisions.

IV. Statutory and Executive Order Reviews

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

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: April 20, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart WW—Washington

■ 2. Section 52.2470 is amended by adding paragraph (c)(87) to read as follows:

§ 52.2470 Identification of plan

* * * * *

(c) * * *

(87) On September 20, 2001, and November 22, 2004, the Washington State Department of Ecology submitted revisions to the Washington State Implementation Plan consisting of A Plan for Attaining Carbon Monoxide National Ambient Air Quality Standards in the Spokane Serious Nonattainment Area. On September 26, 2001, the Washington State Department of Ecology submitted minor revisions to the Washington State Inspection and Maintenance Program.

(i) Incorporation by reference.

(A) Kaiser Aluminum and Chemical Corporation Administrative Order No. DE 01AQIS–3285 dated October 24, 2001, and Kaiser Aluminum and Chemical Corporation Administrative Order No. DE 01AQIS–3285, Amendment #1 dated April 9, 2003.

(B) Washington Administrative Code 173–422–031, "Vehicle emission inspection schedules," and Washington Administrative Code 173–422–170, "Exemptions," as effective 12/2/2000.

(ii) Additional material.

A Plan for Attaining Carbon Monoxide National Ambient Air Quality Standards in the Spokane Serious Nonattainment Area, adopted September 19, 2001, and November 17, 2004.

■ 3. Paragraph (a) (2) of § 52.2475 is revised to read as follows:

§ 52.2475 Approval of plans.

(a) * * *

(2) Spokane.

(i) EPA approves as a revision to the Washington State Implementation Plan, A Plan for Attaining Carbon Monoxide National Ambient Air Quality Standards in the Spokane Serious Nonattainment Area submitted by the Washington Department of Ecology on September 20, 2001 and November 22, 2004.

(ii) [Reserved]

* * * * *

[FR Doc. 05–9400 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 050605D]

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Plaice in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Alaska plaice in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of Alaska plaice in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2005 total allowable catch (TAC) of

Alaska plaice in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 9, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The 2005 TAC of Alaska plaice in the BSAI was established as 6,800 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the Alaska plaice TAC in the BSAI has been reached. Therefore, NMFS is requiring that further catches of Alaska plaice in the BSAI be treated as a prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA). finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of Alaska plaice in the BSAI.

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

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

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

Dated: May 6, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–9515 Filed 5–9–05; 2:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 91
Thursday, May 12, 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–2005–21184; Directorate Identifier 2004–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 airplanes. This proposed AD would require modifying the inflation systems of the upper deck escape slides; single-piece off-wing escape ramps/slides; two-piece off-wing escape slides; and door 1, 2, 4, and 5 escape slides/rafts. This proposed AD is prompted by a report of 30- to 60-second delays in the inflation of escape slides/rafts. We are proposing this AD to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an airplane.

DATES: We must receive comments on this proposed AD by June 27, 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, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or 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–2005–21184; the directorate identifier for this docket is 2004–NM–111–AD.

FOR FURTHER INFORMATION CONTACT: Donald Wren, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6451; fax (425) 917–6590.

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–2005–21184; Directorate Identifier 2004–NM–111–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

We have received a report indicating that, during testing, an operator observed 30- to 60-second delays in the inflation of escape slides/rafts on two Boeing Model 747–200B and –400 series airplanes. Insufficient margin between regulator internal friction and piston actuator force caused the actuation delays in the inflation systems of the escape slides/rafts. This condition, if not corrected, could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an airplane.

The inflation systems of the upper deck escape slides; single-piece off-wing escape ramps/slides; two-piece off-wing escape slides; and door 1, 2, 4, and 5 escape slides/rafts; on certain Model 747–100, –100B, –100B SUD, –200C, –200F, –300, –400D, –400F, 747SP, and 747SR series airplanes are identical to those on the affected Model 747–200B and –400 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed the following service bulletins:

- For certain Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes, Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002; and
- For certain Model 747–200B, –200C, –300, –400, and –400D series airplanes, Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Boeing Service Bulletin 747–25–3279 describes procedures for modifying the inflation systems of the upper deck escape slides; two-piece off-wing escape

slides; and door 1, 2, 4, and 5 escape slides/rafts. Boeing Service Bulletin 747–25–3232 describes procedures for modifying the inflation system of the single-piece off-wing escape ramps/slides. For both Boeing Service Bulletins 747–25–3279 and 747–25–3232, modification includes replacing the plug of the regulator assembly with a pneumatic booster assembly, and replacing the lobed cocking arm in the actuator assembly with a new cocking arm (not lobed).

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Additional Sources of Service Information

Boeing Service Bulletin 747–25–3279 refers to the following service bulletins as additional sources of service information:

- Goodrich Service Bulletin 4A3037–25–327, dated November 30, 2001, for modifying the inflation systems of the upper deck and two-piece off-wing escape slides.
- Goodrich Service Bulletin 4A3056–25–331, dated December 21, 2001; and Goodrich Service Bulletin 4A3221–25–332, dated December 21, 2001; for modifying the inflation systems of the door 1, 2, 4, and 5 escape slides/rafts.

Boeing Service Bulletin 747–25–3232 refers to Goodrich Service Bulletin 4A3416–25–305, Revision 2, dated October 15, 2001, as an additional source of service information for modifying the inflation system of the single-piece off-wing escape ramps/slides.

Concurrent Service Bulletins to Additional Sources of Service Information

Goodrich Service Bulletin 4A3037–25–327 specifies prior or concurrent accomplishment of BFGoodrich Service Bulletin 4A3012/4A3047–25–256, Revision 1, dated October 27, 1999, for regulator assemblies having part numbers (P/N) 4A3047–3 and –4.

Goodrich Service Bulletin 4A3056–25–331 also specifies prior or concurrent accomplishment of BFGoodrich Service Bulletin 4A3012/4A3047–25–256 for regulator assemblies with P/Ns 4A3047 and 4A3047–2.

Goodrich Service Bulletin 4A3221–25–332 specifies prior or concurrent accomplishment of BFGoodrich Service Bulletin 4A3221–25–250, Revision 3, dated October 27, 1999, for regulator assemblies with P/Ns 4A3194–1, –2, and –3.

BFGoodrich Service Bulletin 4A3012/4A3047–25–256 and BFGoodrich Service Bulletin 4A3221–25–250 both describe procedures for replacing the actuator assembly with a new actuator assembly; replacing the compression spring with a new compression spring; and replacing the existing lubricant in the regulator valve with new, improved lubricant during overhaul.

Goodrich Service Bulletin 4A3416–25–305 specifies prior or concurrent accomplishment of the following service bulletins for a regulator assembly having P/N 4A3474–3:

- BFGoodrich Service Bulletin 25–292, Revision 1, dated December 19, 1997, which describes procedures for replacing the o-rings of the regulator assembly with new, improved o-rings;
- BFGoodrich Service Bulletin 4A3416–25–233, Revision 4, dated October 27, 1999, which describes procedures for modifying the regulator core; and replacing the existing lubricant in the regulator valve with new, improved lubricant during overhaul; and
- BFGoodrich Service Bulletin 7A1418–25–253, Revision 2, April 15, 1994, which describes procedures for modifying the reservoir assembly of the regulator assembly; and modifying the inflatable assembly.

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 "Difference Between the Proposed AD and Service Information."

Difference Between the Proposed AD and Service Information

Although the Boeing service bulletins recommend accomplishing the modification at "the next scheduled evacuation system overhaul," we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 36 months for completing the proposed actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This compliance time has been coordinated with the manufacturer.

Cost of Compliance

There are about 958 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 169 airplanes of U.S. registry. The proposed actions would take about 1 work hour per door, at an average labor rate of $65 per work hour.

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Model	Work hours	Parts costs	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
747–100, –100B, –100B SUD, –200B, and –200C series airplanes, identified as Group 1 in Boeing Service Bulletin 747–25–3279.	12	$34,832 (2 each: doors 1, 2, 4, 5, upper deck, and two-piece off-wing).	$35,612	53	$1,887,436
747–200B and –300 series airplanes, identified as Group 2 in Boeing Service Bulletin 747–25–3279.	8	26,368 (2 each: doors 1, 2, 4, and 5).	26,888	4	107,552
747–200B series airplanes, identified as Group 3 in Boeing Service Bulletin 747–25–3279.	10	30,600 (2 each: doors 1, 2, 4, 5, and two-piece off-wing).	31,250	1	31,250

ESTIMATED COSTS—Continued

Model	Work hours	Parts costs	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
747–100, –100B, –100B SUD, –200B, 747SP, and 747SR series airplanes, identified as Group 4 in Boeing Service Bulletin 747–25–3279.	10	30,600 (2 each: doors 1, 2, 4, and 5, and upper deck).	31,250	17	531,250
747–200F and –400F series airplanes, identified as Group 5 in Boeing Service Bulletin 747–25–3279.	2	4,232 (2 upper deck doors).	4,362	32	139,584
747–200B series airplanes, identified as Group 6 in Boeing Service Bulletin 747–25–3279.	2	4,232 (2 two-piece off-wing doors).	4,362	0	0
747–400 and –400D series airplanes, identified in Boeing Service Bulletin 747–25–3232.	2	8,250 (2 single-piece off-wing doors).	8,380	59	494,420
747–200B series airplanes, identified as Group 4 in Boeing Service Bulletin 747–25–3279 and also identified in Boeing Service Bulletin 747–25–3232.	10	30,600 (2 each: doors 1, 2, 4, 5, upper deck, and single-piece off-wing).	31,250	3	93,750

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 AD.

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):

Boeing: Docket No. FAA–2005–21184; Directorate Identifier 2004–NM–111–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Boeing—	As identified in—
Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes.	Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002.
Model 747–200B, –200C, –300, –400, and –400D series airplanes	Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Unsafe Condition

(d) This AD was prompted by a report of 30-to 60-second delays in the inflation of escape slides/rafts. We are issuing this AD to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an 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.

Modification for Upper Deck, Two-Piece Off-Wing, and Door 1, 2, 4, and 5 Slides and Slide/Rafts

(f) For Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes identified in Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002: Within 36

months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002.

(1) Modify the inflation systems of the upper deck and two-piece off-wing escape slides.

(2) Modify the inflation systems of the door 1, 2, 4, and 5 escape slides/rafts, as applicable.

Note 1: Boeing Service Bulletin 747–25–3279 refers to Goodrich Service Bulletin 4A3037–25–327, dated November 30, 2001; Goodrich Service Bulletin 4A3056–25–331, dated December 21, 2001; and Goodrich Service Bulletin 4A3221–25–332, dated December 21, 2001; as additional sources of service information for doing the modifications.

Modification for Single-Piece Off-Wing Ramp/Slides

(g) For Model 747–200B, –200C, –300, –400, and –400D series airplanes identified in Boeing Service Bulletin 747–25–3232, dated July 6, 2000: Within 36 months after the effective date of this AD, modify the inflation system of the single-piece off-wing escape ramps/slides, in accordance with Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Note 2: Boeing Service Bulletin 747–25–3232 refers to Goodrich Service Bulletin 4A3416–25–305, Revision 2, dated October 15, 2001, as an additional source of service information for doing the modification.

Parts Installation

(h) As of the effective date of this AD, unless the regulator assembly of the inflation system has been modified in accordance with paragraph (f) or (g) of this AD, as applicable, no person may install on any airplane a regulator assembly with any of the following part numbers (P/Ns): P/N 4A3047, –2, –3, –4, –5, –8, –9, or –10; P/N 4A3194–1, –2, –3, or –4; or P/N 4A3474–3.

Credit for Previous Service Bulletin

(i) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–25–3279, dated May 16, 2002, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Seattle Aircraft Certification Office, 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 May 4, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9469 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21189; Directorate Identifier 2005–NM–055–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series 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 Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD would require modification of the electrical bonding of all structures and systems installed inside the center fuel tank. This proposed AD is prompted by results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent electrical arcing in the center fuel tank due to inadequate bonding, which could result in an explosion of the center fuel tank and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 13, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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–2005–21189; the directorate identifier for this docket is 2005–NM–055–AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

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–2005–21189; Directorate Identifier 2005–NM–055–AD" at the beginning 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 our docket 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 the 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

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the

adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to cooperate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A318, A319, A320, and A321 series airplanes. The DGAC advises that a design review showed that the electrical bonding in the center fuel tank of the affected airplanes should be modified. The modification would reduce the possibility of an electrical discharge in the fuel tank. An electrical discharge could result in an explosion of the center fuel tank and consequent loss of the airplane.

Relevant Service Information

Airbus has issued Airbus Service Bulletin A320–28–1104, Revision 01, dated December 8, 2004. The service bulletin describes procedures for modifying the electrical bonding of all structures and systems installed inside the center fuel tank of the affected airplanes. The modification consists of checking certain existing bonding points for the presence of blue coat and installing new bonding points. If blue coat is present at the bonding point, the service bulletin recommends no further action. If blue coat is not present, the service bulletin recommends measuring the electrical (ohmic) resistance between the part and the structure. If the ohmic resistance is less than 10 milliohms, the service bulletin recommends no further action. If the ohmic resistance is 10 milliohms or more, the service bulletin recommends installing the bonding.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–028, dated February 16, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the French Airworthiness Directive."

Difference Between the Proposed AD and the French Airworthiness Directive

The applicability of French airworthiness directive F–2005–028 excludes airplanes that accomplished Airbus Service Bulletin A320–28–1104 in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in that service bulletin. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved. This difference has been coordinated with the DGAC.

Clarification of Inspection Language

The service bulletin specifies that operators should "check" for the presence of blue coat. In this proposed AD we refer to this action as a "general visual inspection." Note 1 of this proposed AD defines this inspection.

Costs of Compliance

This proposed AD would affect about 506 airplanes of U.S. registry. The proposed actions would take between 49 and 64 work hours per airplane depending on the airplane's configuration. The average labor rate is $65 per work hour. Required parts would cost between $10 and $370 per airplane, depending on the airplane's configuration. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $1,616,670 and $2,292,180, or between $3,195 and $4,530 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory 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):

Airbus: Docket No. FAA–2005–21189; Directorate Identifier 2005–NM–055–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by June 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes; certificated in any category; except airplanes that have received Airbus Modification 31892 in production.

Unsafe Condition

(d) This AD was prompted by results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing in the center fuel tank due to inadequate bonding, which could result in an explosion of the center fuel tank and consequent loss 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.

Inspection and Related Investigative and Corrective Actions

(f) Within 58 months after the effective date of this AD: Modify the electrical bonding of all structures and systems installed inside the center fuel tank by accomplishing all of the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1104, Revision 01, dated December 8, 2004.

Actions Accomplished According to Previous Issue of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1104, dated December 2, 2003, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2005–028, dated February 16, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on May 5, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9472 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–159243–03]

RIN 1545–BC86

Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects temporary regulations (REG–159243–03) that were published in the **Federal Register** on Monday, April 11, 2005 (70 FR 18949). The document contains temporary regulations providing rules under section 937(a) of the Internal Revenue Code (Code) for determining whether an individual is a bona fide resident of the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations (REG–159243–03) that is the subject of these corrections are under section 937 of the Internal Revenue Code.

Need for Correction

As published, REG–159243–03 contain errors that may prove to be misleading and are in need of clarification.

List of Subjects

Income taxes.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations (REG–159243–03), that was the subject of FR Doc. 05–7088, is corrected as follows:

1. On page 18949, column 1, in the preamble under the caption **SUMMARY**, second paragraph, third line, the language "sections 1, 876, 881, 884, 931, 932, 933," is corrected to read, "sections 876, 881, 884, 931, 932, 933,".

PART 1—INCOME TAXES

Authority: 26 U.S.C. 7805 * * * Section 1.935–1 also issued under 26 U.S.C. 7654(e). * * *

§ 1.934–1 [Corrected]

2. On page 18951, column 2, § 1.934–1, Par. 15, line 2, the language "is amended as follows:" is corrected to read "as follows:".

§ 1.935–1 [Corrected]

3. On page 18951, column 3, § 1.935–1, line 3, the language "through (3) is the same as the text of" is corrected to read "through (a)(3) is the same as the text of".

4. On page 18952, column 3, in the signature block, the language "Deputy Commissioner for Services and" is corrected to read "Acting Deputy Commissioner for Services and".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 05–9422 Filed 5–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 42; Re: Notice No. 34]

RIN: 1513–AA64

Proposed Fort Ross-Seaview Viticultural Area (2003R–191T); Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to an industry member request, the Alcohol and Tobacco Tax and Trade Bureau extends the comment period for Notice No. 34, Proposed Fort Ross-Seaview Viticultural Area, a notice of proposed rulemaking published in the **Federal Register** on March 8, 2005, for an additional 30 days.

DATES: Written comments must be received on or before June 8, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 29, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this extension notice, Notice No. 34, the petition, the appropriate maps, and any comments we receive on Notice No. 34 by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this extension notice, Notice No. 34, and the related comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION: Patrick Shabram, on his own behalf and on behalf of David Hirsch of Hirsch Vineyards, submitted a petition to establish the "Fort Ross-Seaview" American viticultural area in western Sonoma County, California. Located near the Pacific Ocean about 65 miles north of San Francisco, the proposed Fort Ross-Seaview viticultural area is within the existing North Coast (27 CFR 9.30) and Sonoma Coast (27 CFR 9.116) viticultural areas. The petitioner states that the proposed area currently has 18 commercial vineyards on 506 acres.

In Notice No. 34, published in the **Federal Register** (70 FR 11174) on Tuesday, March 8, 2005, we described the petitioner's rationale for the proposed establishment and requested comments on the proposal on or before May 9, 2005.

On May 3, 2005, we received a request from Brice Cutrer Jones to extend the comment period for Notice No. 34. Mr. Jones owns two vineyards close to the proposed Fort Ross-Seaview viticultural area. In his comment, Mr. Jones states that the proposed Ft. Ross-Seaview viticultural area boundary unjustifiably excludes nearby parcels subject to the same environmental influences, and he requested at least 30 additional days to comment on Notice No. 34.

In response to this request, we extend the comment period for Notice No. 34 an additional 30 days. Therefore, comments on Notice No. 34 are now due on or before June 8, 2005.

Drafting Information

Nancy Sutton of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

This notice is issued under the authority of 27 U.S.C. 205.

Signed: May 9, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–9545 Filed 5–10–05; 8:57 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–LA–0001; FRL–7910–7]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Attainment Demonstration for the Shreveport-Bossier City Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality (LDEQ) on December 28, 2004. The proposed revisions will incorporate the Shreveport-Bossier City Metropolitan Statistical Area (MSA) Early Action Compact (EAC) Air Quality Improvement Plan (AQIP) into the Louisiana SIP. EPA is proposing approval of the photochemical modeling in support of the attainment demonstration of the 8-hour ozone standard within the Shreveport-Bossier City EAC area and is proposing approval of the associated control measures. EPA is proposing these actions as a strengthening of the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act). The revisions will contribute to improvement in air quality and continued attainment of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: Comments must be received on or before June 13, 2005.

ADDRESSES: Submit comments, identified by Regional Material in eDocket (RME) ID No. R06–OAR–2005–LA–0001, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Agency Web site: *http://docket.epa.gov/rmepub/*. Regional Material in eDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in eDocket (RME) ID No. R06–OAR–2005–LA–0001. The EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in eDocket (RME), *http://www.regulations.gov*, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal *http://www.regulations.gov* are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in eDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

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

Louisiana Department of Environmental Quality, Office of Environmental Assessment, Airshed Planning Division, SIP Development Section, 602 North Fifth Street, Baton Rouge, Louisiana 70802.

FOR FURTHER INFORMATION CONTACT: Clovis Steib, III, Air Program Branch (6PD), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–7566, *steib.clovis@epa.gov*. or Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521, *paige.carrie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "our," and "us" is used, we mean EPA.

Outline

I. What Action Are We Proposing?

Today we are proposing to approve a revision to the Louisiana SIP, under sections 110 and 116 of the Act, submitted to EPA by the LDEQ on December 28, 2004. The revision demonstrates attainment of the 8-hour ozone NAAQS within the Shreveport-Bossier City MSA and requests approval of the Shreveport-Bossier City EAC AQIP into the Louisiana SIP. The EAC is a voluntary agreement between the LDEQ, the Greater Shreveport Clean Air Citizens Advisory Committee (CACAC) and EPA. Within this agreement, CACAC represents the three parishes of Caddo, Bossier and Webster and the cities of Shreveport and Bossier City. The intent of this agreement, known as the Shreveport-Bossier City EAC or the EAC, is to reduce ozone pollution and thereby maintain the 8-hour ozone standard. The Shreveport-Bossier City EAC AQIP is the official attainment/maintenance plan for the MSA which was developed under the EAC program. LDEQ has submitted the AQIP to EPA for approval as a revision to the Louisiana SIP. The revision demonstrates, with photochemical modeling, attainment and maintenance of the 8-hour ozone standard in the Shreveport-Bossier City EAC area and includes local control measures. The Shreveport-Bossier City AQIP also sets forth a schedule to develop additional technical information about local ozone pollution, and adopt and implement emissions control measures to ensure that the Shreveport-Bossier City MSA achieves compliance with the 8-hour ozone standard by December 31, 2007. Section VI of this rulemaking describes the control measures that will be implemented within the Shreveport-Bossier City EAC area.

The monitored ozone concentrations in the Shreveport-Bossier City EAC area have not exceeded the federal 1-hour ozone standard. The EPA designated the Shreveport-Bossier City EAC area as attainment for the 8-hour ozone standard on April 15, 2004 (69 FR 23858). The LDEQ has submitted these revisions to the SIP, with additional control measures, as preventive and progressive measures to avoid a future violation and to ensure long term maintenance of the 8-hour ozone standard within the affected area.

II. What Is an EAC?

The Early Action Compact program was developed to allow communities an opportunity to meet the new stricter 8-hour ozone air quality standard sooner than the Act requires for reducing ground level ozone. The program was designed for areas that approach or monitor exceedances of the 8-hour standard, but are in attainment for the 1-hour ozone standard. The compact is a voluntary agreement between local communities, State air quality officials and EPA, which allows participating State and local entities to make decisions that will accelerate meeting the new 8-hour standard using locally tailored pollution controls instead of federally mandated measures. Early planning and early implementation of control measures that improve air quality will likely accelerate protection of public health. The EPA believes this program provides an incentive for early planning, early implementation, and early reductions of emissions leading to expeditious attainment and maintenance of the 8-hour ozone standard.

Communities with EACs will have plans in place to reduce air pollution at least two years earlier than required by the Act. In December 2002, a number of States submitted compact agreements pledging to reduce emissions earlier than required by the Act for compliance with the 8-hour ozone standard. These States and local communities had to meet specific criteria and agreed to meet certain milestones for development and implementation of the compact. States with communities participating in the EAC program had to submit plans for meeting the 8-hour ozone standard by December 31, 2004, rather than June 15, 2007, the deadline for other areas not meeting the standard. The EAC program required communities to develop and implement air pollution control strategies, account for emissions growth and demonstrate their attainment and maintenance of the 8-hour ozone standard. Areas that adopted EACs must establish a clean air action plan, meet other established milestones and attain the 8-hr ozone standard by December 31, 2007. Greater details of the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** notice entitled "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas."

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. The EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour standard, but continue to meet the compact milestones. Details of this deferral were announced on April 15, 2004 as part of the Clean Air Rules of 2004, and published in the **Federal Register** on April 30, 2004 in the notice entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates" (69 FR 23858).

III. What Is a SIP?

The SIP is a set of air pollution regulations and control strategies developed by the state, to ensure that the state meets the National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP is required by Section 110 of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

IV. What Is the Content of the Shreveport-Bossier City EAC Attainment Demonstration?

The attainment demonstration contains analyses which estimate whether selected emissions reductions will result in ambient concentrations that meet the 8-hour ozone standard in the Shreveport-Bossier City EAC area, and an identified set of measures which will result in the required emissions reductions. The demonstration incorporates the effects of population and industry growth, as well as national, state and local control measures required to be in place by 2007 and 2012. The modeled attainment test is passed if all resulting predicted future design values are less than 85 parts per billion (ppb). The design value is the three year average of the annual fourth highest 8-hour ozone readings.

In support of this proposal, the CACAC and LDEQ conducted an ozone photochemical modeling study developed for the Shreveport-Bossier City EAC area. This study meets EPA's modeling requirements and guidelines, including such items as the base year emissions inventory development, the growth rate projections, and the performance of the model. See our Technical Support Document (TSD) for detailed information on this modeling study.

The modeling submitted in support of this proposal simulated the complex processes leading to high ozone in the Shreveport-Bossier City EAC area. The modeling results indicate that, despite the area's expected growth in population between 2007 and 2012, the expected emission reductions from both the EAC AQIP measures and national measures provide improvement in ozone air quality and maintenance of the 8-hour standard in the EAC area. The modeling results demonstrate that the Shreveport-Bossier City EAC area would continue in attainment with the 8-hour ozone NAAQS in 2007 and 2012. The modeling predicts a maximum ozone design value of 84 ppb in 2007 and 83 ppb in 2012, both of which are below the 8-hour ozone standard of 85 ppb. The EPA is proposing to approve the LDEQ's 8-hour ozone attainment demonstration and AQIP, including the control measures listed in section VI, for the Shreveport-Bossier City EAC area.

V. Why Are We Proposing To Approve This EAC SIP Submittal?

We are proposing to approve this EAC SIP submittal because implementation of the requirements in this EAC AQIP will help ensure the Shreveport-Bossier City EAC area's compliance with the 8-hour ozone standard by December 13, 2007 and maintenance of that standard through 2012. We have reviewed the submittals and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol. Our Technical Support Document (TSD) contains detailed information concerning this rulemaking action.

We are proposing approval of the EAC AQIP as a strengthening of the SIP which will yield improvements in air quality to the Shreveport-Bossier City EAC communities. EPA has determined that the State and local area have fulfilled the milestones and obligations of the EAC Program to date.

VI. What Measures Are Included in This EAC SIP Submittal?

To help achieve attainment, the CACAC developed a list of control measures for the EAC that the City of Shreveport and local, private industries have committed to implement by December 31, 2005. These control measures were adopted by the State, are quantifiable, permanent, and will provide reductions in nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in the Shreveport-Bossier City EAC area; NO_X and VOCs are precursors to and aid in the formation of ozone.

Local control measures in the EAC AQIP have been included in the model runs and are predicted to provide the following reductions: (1) Installation of an intelligent transportation system in Shreveport, projected to reduce NO_X by 0.01 tons per day (tpd) and VOCs by 0.048 tpd. (2) A permit modification for a VOC abatement system, installed at the General Motors plant in Caddo Parish as part of their new product line and is projected to reduce VOCs by 1.37 tpd. This is codified in Title V permit 0500–0047–V1, dated 7/31/2001 and PSD permit PSD–LA–646, dated 3/24/2000, issued by the LDEQ and submitted as part of the AQIP. (3) A permit modification at Center Point Energy in Bossier Parish is projected to reduce NO_X by 2.56 tpd and VOCs by 0.014 tpd. The plant serves to remove natural gas liquids from gas streams for commercial purposes and an upgrade in the separation process will reduce the need for a significant number of process equipment and corresponding emissions from these units. The permit (0400–00006–02) was provided in the EAC SIP submittal. (4) The installation of energy conservation equipment in 33 city buildings throughout the EAC area is estimated to reduce NO_X by 0.041 tpd. This measure is consistent with EPA's August 5, 2004 Guidance on SIP Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures and EPA's September 2004 guidance on Incorporating Emerging and Voluntary Measures in a SIP. (5) The purchase and use of one hybrid electric bus in Shreveport is projected to reduce NO_X by 0.002 tpd.

These local control measures are described in detail in the TSD and will be incorporated by reference in the Code of Federal Regulations in the final approval action. Detailed information is necessary for emission reduction measures in the SIP to ensure that they are specific and enforceable as required by the Act and the EAC protocol and reflected in our policy. The description of these emission reduction measures includes the identification of each project, location, length of each project (if applicable), a brief project description, implementation date and emissions reductions for both VOCs and NO_X.

Though not quantified and thus not included in the modeling, installation and use of a gas collection system on Shreveport's municipal solid waste landfill is also expected to provide emission reductions.We are proposing to approve the local control measures listed above. In compliance with the next EAC milestone, these measures will be implemented on or before December 31, 2005. The TSD contains additional information on each of these control measures.

According to the EAC protocol, the AQIP must also include a component to address maintenance for growth at least 5 years beyond 2007, ensuring the area will remain in attainment of the 8-hour ozone standard through 2012. The Shreveport-Bossier City EAC area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan.

The expected changes in emissions between 2000 and 2012 result in a 24 percent reduction in anthropogenic NO_X emissions and a 21 percent reduction in anthropogenic VOC emissions. These projections indicate that precursor NO_X and VOC emissions in the EAC area are expected to decrease further in 2012 compared to 2007 as a result of vehicle fleet turnover and a number of new national rules affecting on-road and off-road engine and fuel requirements (see the TSD for details on the Clean Air Diesel and Clean Air Nonroad Diesel rules). Using air quality models to anticipate the impact of growth, as well as the federal, state-assisted and locally-implemented measures to reduce emissions, the State has projected the area will be in attainment of the 8-hour ozone standard in 2007 and will remain in attainment through 2012.

To fulfill the planning process, the EAC signatories will review all EAC activities and report on these results in their semi-annual reports, beginning in June 2005. The semi-annual reviews will provide a description of whether the area continues to implement its control measures, the emissions reductions being achieved by the control measures in place, and the improvements in air quality that are being made. Each report must track and document, at a minimum, control strategy implementation and results, monitoring data and future plans. Ongoing, updated emissions inventories and modeling analyses will be included as they become available. After each semi-annual review, additional control measures may be considered and, if necessary, adopted through revisions to this SIP.

The elements that address maintenance for growth meet the EAC protocol. EPA has reviewed the modeling and emission projections and proposes to approve the demonstration of attainment.

VII. What Happens if the EAC Area Does Not Meet the EAC Milestones?

On April 15, 2004, EPA designated the Shreveport-Bossier City EAC area as attainment for the 8-hour ozone standard. The measures outlined in the Shreveport-Bossier City EAC SIP submittal provide sufficient information to conclude that the Shreveport-Bossier City EAC area will complete each compact milestone requirement, including attainment of the 8-hour ozone standard by 2007. However, one of the principles of the EAC protocol is to provide safeguards to return areas to traditional SIP requirements should an area fail to comply with the terms of the compact. If, as outlined in our guidance and in 40 CFR 81.300, a compact milestone is missed and the Shreveport-Bossier City EAC area is still in attainment of the 8-hour ozone standard, we would take action to propose and promulgate a finding of failure to meet the milestone, but the 8-hour ozone attainment designation and the approved SIP elements would remain in effect. If the EAC area subsequently violates the 8-hour ozone standard and the area has missed a compact milestone, we would also consider factors in section 107(d)(3)(A) of the Act in deciding whether to redesignate the EAC area to nonattainment for the 8-hour ozone NAAQS. See 69 FR 23858, 23871.

VIII. Proposed Action

EPA is proposing to approve the attainment demonstration, its associated control measures, and the Shreveport-Bossier City EAC AQIP and incorporate these into the Louisiana SIP as a strengthening of the SIP. The modeling of ozone and ozone precursor emissions from sources in the Shreveport-Bossier City EAC area demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory

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

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

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

List of Subjects 40 CFR Part 52

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

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

Dated: May 4, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–9481 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–OK–0002; FRL–7910–8]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Attainment Demonstration for the Tulsa Early Action Compact Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Oklahoma State Implementation Plan (SIP) submitted by the Secretary of the Environment on December 22, 2004 for Tulsa. This revision will incorporate a Memorandum of Agreement (MOA) between the Oklahoma Department of Environmental Quality (ODEQ) and the Indian Nation Council of Governments (INCOG) into the Oklahoma SIP and includes a demonstration of attainment for the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The MOA outlines pollution control measures for the Tulsa Metropolitan Area Early Action Compact (EAC) area. The EAC is designed to achieve and maintain the 8-hour ozone standard more expeditiously than the EPA's 8-hour implementation rulemaking. EPA is proposing approval of the photochemical modeling in support of the attainment demonstration of the 8-hour ozone standard within the Tulsa EAC area and is proposing approval of the associated control measures. We are proposing to approve this revision as a strengthening of the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act), which will result in emission reductions needed to help ensure attainment of the 8-hour NAAQS for ozone.

DATES: Comments must be received on or before June 13, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–OK–0002, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R06–OAR–2005–OK–0002. The EPA's policy is that all comments

received will be included in the public file without change, change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

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

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, Oklahoma City, OK 73101–1677.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Boyce, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7259, *boyce.kenneth@epa.gov* or Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521, *paige.carrie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

Outline

I. What Action Are We Proposing?

Today we are proposing to approve a revision to the Oklahoma SIP under sections 110 and 116 of the Act. The revision was submitted to EPA by the State of Oklahoma on December 22, 2004. This revision demonstrates attainment of the 8-hour ozone standard within the Tulsa Metropolitan Area (Tulsa Area), which includes Tulsa County and portions of Creek, Osage, Rogers, and Wagoner Counties. The Tulsa Area EAC is a voluntary agreement between the ODEQ, the City of Tulsa, the County of Tulsa, the Metro Tulsa Chamber of Commerce, the INCOG and EPA. The intent of this agreement is to reduce ozone pollution earlier than the Act requires and thereby maintain the 8-hour ozone standard. The Tulsa Area EAC sets forth a schedule to develop technical information about local ozone pollution, and adopt and implement emissions control measures to ensure that this area achieves compliance with the 8-hour ozone standard by December 31, 2007. Section VI of this rulemaking describes the control measures that will be implemented within the Tulsa Metropolitan Area.

II. What Is an EAC?

The Early Action Compact program was developed to allow communities an opportunity to reduce emissions of ground level ozone pollution sooner than the Act requires. The EAC program was designed for areas that approach or monitor exceedances of the 8-hour ozone standard, but are in attainment for the 1-hour ozone standard. The compact is a voluntary agreement between local communities, States and tribal air quality officials, and EPA which allows States and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using locally tailored pollution controls instead of Federally mandated control measures. Early planning and early implementation of control measures that improve air quality will likely accelerate protection of public health. The EPA believes the EAC program provides an incentive for early planning, early implementation, and early reductions of air emissions in the affected areas, thus leading to an expeditious attainment and maintenance of the 8-hour ozone standard.

Communities with EACs will have plans in place to reduce air pollution at least two years earlier than required by the Act. In December 2002, a number of States submitted compact agreements pledging to reduce emissions earlier than required for compliance with the 8-hour ozone standard. These states and local communities had to meet specific criteria, and agreed to meet certain milestones for development and implementation of the compact. States with communities participating in the EAC program had to submit implementation plans by December 31, 2004 for meeting the 8-hour ozone standard, rather than June 15, 2007, the deadline for all other areas not meeting the 8-hour standard. The EAC program required communities to develop and implement air pollution control strategies, account for emissions growth, and demonstrate their attainment and maintenance of the 8-hour ozone standard. For more information on the EAC program see section V of our December 16, 2003 proposed rule (68 FR 70108), entitled "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas."

On April 15, 2004, EPA designated all areas for the 8-hour ozone standard. The EPA deferred the effective date of

nonattainment designations for those EAC areas that were violating the 8-hour standard, but continue to meet the compact milestones. We announced the details of this deferral on April 15, 2004 as part of the Clean Air Rules of 2004. See our April 30, 2004 (69 FR 23858), publication entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates."

III. What Is a SIP?

The SIP is a set of air pollution regulations, control strategies and technical analyses developed by the state, to ensure that the state meets the NAAQS. These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP is required by Section 110 of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

IV. What Is the Content of the Tulsa Area EAC Attainment Demonstration?

In support of this proposal, the ODEQ conducted an ozone photochemical modeling study developed for the Tulsa Metropolitan area. The modeling study predicts whether or not the EAC area will attain the 8-hour ozone NAAQS in 2007. The attainment demonstration includes analyses which estimate whether selected emissions reductions will result in ambient concentrations that meet the 8-hour ozone standard in the Tulsa EAC area, and an identified set of measures which will result in the required emissions reductions.

The modeled attainment test is passed if all resulting predicted future design values are less than 85 parts per billion (ppb). The design value is the three year average of the annual fourth highest 8-hour ozone readings. The attainment demonstration modeling predicted that the Tulsa area would be in attainment for all but one monitor in Tulsa using Design Values from 1998–2000. It predicted that the Tulsa area would be in attainment for all of the monitors in Tulsa using Design Values for 2000–2002. Therefore, the Tulsa Area considered the following additional elements, termed a Weight of Evidence (WOE) analysis, to show that the area will more likely than not, reach attainment by the end of 2007:

1. A comparison of Design Values (DVs) from 1996 to 2003 using Relative Reduction Factors (RRFs) from the modeling demonstrated that five of the six observed DVs from this period would reach attainment by the end of 2007. Only the DV for the 1998–2000 period predicted an exceedance of the 8-hour ozone standard in 2007 at one monitor (Skiatook monitor). All other years of observed DVs predicted attainment of the 8-hour ozone standard in 2007.

2. A comparison of the average of the three DVs that contain the 1999 period with the modeling RRFs (using DVs for the years 1997–2001), predicted all the Tulsa area monitors will reach attainment including a future design value of 84 ppb in 2007 at the Skiatook monitor. This test is the new proposed attainment test in EPA's Draft Final 8-hr ozone modeling guidance dated February 2005.

3. An examination of trends (changes in ozone and ozone exposure areas) in additional modeled ozone air quality outputs for 1999 and 2007 indicated that sizable reductions in ozone and area of ozone exposure are predicted although these tests fell slightly short of the level of reduction recommended in EPA's guidance.

4. An examination of additional independent modeling that demonstrates attainment in Oklahoma, including Tulsa, was completed by EPA as part of an analysis in support of the Interstate Air Quality Rule (signed March 10, 2005). This independent modeling assumed growth but did not include the control measures which will be implemented within the Tulsa EAC area by December 31, 2005. The EPA modeling predicted a maximum 8-hour ozone DV for Tulsa of 76 ppb for 2010 and 74 ppb for 2015. These values are consistent with the Tulsa EAC area's predicted 8-hour ozone DV of 78 ppb in 2007 using the 2001–2003 observed 8-hour ozone DV.

5. A review of trends in observed 8-hour ozone DVs from monitoring sites in Tulsa revealed a general downward trend in ozone. An evaluation of emission trends of ozone precursors also indicate a general downward trend. By 2007, volatile organic compounds (VOC) emissions are projected to be 14 percent lower than in 1999 and 13 percent lower than in 2002. By 2007, nitrogen oxides (NO_X) emissions are projected to be 23 percent lower than in 1999 and 10 percent lower than in 2002. It should also be noted that Tulsa is currently in attainment based on the two most recent ozone DVs. These trends and monitoring data combined further support the prediction that ozone levels will continue to drop in the Tulsa area and thereby Tulsa will still be attaining the 8-hour ozone standard in 2007.

See Appendix B of our technical support document (TSD) for more information regarding this modeling study and Weight of Evidence analyses and EPA's evaluation of these items.

The analysis of elements within the WOE provide strong evidence that the Tulsa Metropolitan Area should continue to attain the 8-hour ozone standard through December 31, 2007 and maintain that standard through 2012. The analysis also follows the discussion on WOE in EPA's draft guidance for modeling, May 1999. Therefore, EPA is proposing to approve the 8-hour ozone attainment demonstration and air quality improvement plan for the Tulsa EAC area.

The strategy that Tulsa has chosen to help achieve emissions reductions is identified as the Tulsa Area Transportation Emission Reduction Strategy and is discussed in section VI of this rulemaking.

V. Why Are We Proposing To Approve This EAC SIP Submittal?

We are proposing to approve this EAC SIP submittal because implementation of the requirements in the MOA will help ensure the Tulsa area's compliance with the 8-hour ozone standard by December 31, 2007 and maintenance of that standard through 2012. Additionally, our review of modeling and other items provided as Weight of Evidence indicate the area should continue to be in attainment by December 31, 2007. We have reviewed these submittals and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol. Our TSD contains more detailed information concerning our evaluation and this rulemaking action.

Approving the Tulsa Metropolitan area's clean air plan into the SIP with the measures and controls identified in the MOA provide a strengthening of the SIP for the Tulsa Metropolitan EAC Area. In addition, the Tulsa EAC communities will start to benefit from reductions in air pollution earlier than the statutory deadlines. Finally, it means that EPA has determined that the State and local area have continued to fulfill the milestones and obligations of the EAC Program.

VI. What Measures Are Included in This EAC SIP Submittal?

The EPA designated the Tulsa EAC area as attainment for the 8-hour ozone standard (63 FR 23858), but the area has

intermittently monitored violations of the federal 8-hour ozone standard. The ODEQ has submitted this revision to the SIP as a preventive and progressive measure to avoid violation of the 8-hour ozone standard within the affected area.

The MOA submitted within this SIP revision sets forth the duties and responsibilities for implementation of the Tulsa Area Transportation Emission Reduction Strategies. The attainment demonstration relied upon Intelligent Transportation System (ITS) and Transportation Congestion Mitigation measures, which comprise the Transportation Emission Reduction Strategies. The specific measures are roadway expansion and improvement projects and intersection improvement projects (signal and other improvements). These control measures are projected to reduce emissions of NO_X by 2.62 tons per day (tpd) and reduce emissions of VOCs by 0.02 tpd. These Emission Reduction Strategies are described in detail in the TSD and they will be incorporated by reference in the Code of Federal Regulations in the final approval action. Detailed information is necessary for emission reduction measures in the SIP to ensure that they are specific and enforceable as required by the Act and the EAC protocol. The description of these emission reduction measures includes the identification of each project, location, length of each project (if applicable), a brief project description, implementation date and emissions reductions for both VOCs and NO_X. We are proposing to approve the ITS and Transportation Congestion Mitigation measures. In compliance with the next EAC milestone, these measures will be implemented on or before December 31, 2005.

Per the EAC protocol, the clean air plan must also include a component to address maintenance for growth at least 5 years beyond 2007, ensuring the area will remain in attainment of the 8-hour ozone standard through 2012. The Tulsa EAC area has developed an emissions inventory for the year 2012, as well as a continuing planning process to address this essential part of the plan. The emissions reductions for NO_X are predicted to be 9% lower in 2012 than in 2007 and the reductions for VOCs are predicted to be 4% lower in 2012 than in 2007. Using air quality models to anticipate the impact of growth, as well as the state-assisted and locally-implemented measures to reduce emissions, the State has projected the area will be in attainment of the 8-hr ozone standard in 2007 and will remain in attainment through 2012. For more information on future growth projections, see the TSD.

To fulfill the planning process, the EAC signatories and implementing agencies will review all EAC activities and report on results in their semi-annual reports, beginning in June 2005. This semi-annual review will track and document, at a minimum, control strategy implementation and results, monitoring data and future plans. After review, if necessary, additional control measures may be considered and adopted through revisions to this SIP.

VII. What Happens if the Area Does Not Meet the EAC Commitments or Milestones?

On April 15, 2004, EPA designated the Tulsa Metropolitan area as attainment for the 8-hour ozone standard. We believe the local and State signatories of the Tulsa Area EAC will continue to meet their commitments to reduce ozone pollution. The measures outlined in the submittal provide sufficient information to conclude that the Tulsa EAC area will complete each of the EAC milestone requirements, including attainment of the 8-hour ozone standard by 2007. However, one of the principles of the EAC protocol is to provide safeguards to return areas to traditional SIP requirements should an area fail to comply with the terms of the compact. If, as outlined in our guidance and in 40 CFR 81.300, an EAC milestone is missed and the area is still in attainment of the 8-hour ozone standard, we would take action to propose and promulgate a finding of failure to meet the milestone, but the ozone attainment designation and approved SIP elements would remain in effect. If the design value for the EAC area exceeds the 8-hour ozone standard and the area has missed a compact milestone, we would also consider factors in section 107(d)(3)(A) of the Act in deciding whether to redesignate the EAC area to nonattainment for the 8-hour ozone NAAQS.

VIII. Proposed Action

The EPA is proposing to approve the Tulsa EAC area's attainment demonstration, associated local control measures of ITS and Transportation Congestion Mitigation measures, and the EAC Plan into the Oklahoma SIP as a strengthening of the SIP. The modeling of ozone and ozone precursor emissions from sources in the Tulsa EAC area, in conjunction with the consideration of the WOE, demonstrate that the control strategies will continue to provide for attainment of the 8-hour ozone NAAQS by December 31, 2007.

IX. Statutory and Executive Order Reviews

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

Executive Order 13175 (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 proposed rule may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. This rule incorporates an MOA between the ODEQ and INCOG into the Oklahoma SIP. The MOA was the result of numerous discussions between local communities, the State, and tribal air quality officials which have occurred during the previous three years. EPA consulted with tribal officials early in the process of developing Early Action Compacts which provided for meaningful and timely input on behalf of the tribes into its development. Local communities, the State, and tribal air quality officials voluntarily agreed to implement this rule revision so that the Tulsa EAC area could continue to attain and maintain the 8-hour ozone standard.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 4, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–9483 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0021; FRL–7910–9]

Approval and Promulgation of Implementation Plans; State of Texas; Control of Air Pollution From Motor Vehicles, Mobile Source Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) to incorporate the Texas Emission Reduction Plan (TERP) into the Texas SIP. The TERP is utilized in each of the nonattainment areas and near nonattainment areas in the state to achieve reductions in the emissions of oxides of nitrogen from on-road and non-road mobile sources. This action will allow the State to capture credit from those reductions and use them in attainment demonstrations for these areas.

DATES: Comments must be received on or before June 13, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0021, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/*. Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L),. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0021. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure.

The EPA RME website and the federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD–L),

Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov*.

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

Outline

What Action Are We Taking?

We are proposing to approve a revision to the SIP as an economic incentive program consistent with EPA's guidance. For a more complete description of our review, please see the technical support document for this action.

We are proposing to approve rules that implement a portion of the TERP legislation. The legislation created an economic incentive program to accelerate the introduction of lower emitting mobile source technologies in nonattainment and near nonattainment areas of Texas. The State adopted these rules on August 22, 2001.

We are also proposing to approve revisions to these rules that the State adopted on January 28, 2004, and submitted to EPA on March 3, 2004.

What Is the Background for This Action?

In 2001, the Texas Legislature enacted Senate Bill 5, which established the TERP. The TERP includes a grant program designed to accelerate the early introduction and use of lower emitting diesel technologies in the nonattainment and near nonattainment areas of Texas; a grant program to fund improved energy efficiency in buildings; purchase and lease incentives to encourage the introduction of cleaner light duty vehicles into the Texas fleet; and funding for research and development programs focused on new air pollution reduction technologies. This legislation also establishes a statewide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet more stringent emission standards than those required by any federal requirements. The incentives eligible for on-road diesel vehicles are for the incremental cost to purchase the cleaner vehicle. The incentive for eligible light duty vehicles is a specified dollar amount. Each of the incentives is based on the specific emission standard to which the vehicle is certified.

In 2003 Texas House Bill 1365 amended surcharges and fees which fund TERP, along with the eligibility criteria. The 2003 amendments broaden the list eligible to apply for a grant. This adoption also adds three counties to the list where eligible projects may be funded and also includes all counties in nonattainment areas. The amendment also provides for the new methods for streamlining the grant process for small business. The 2003 legislation was projected to provide approximately $120 million per year for funding those programs through September 2008.

What Did the State Submit?

On March 9, 2005, the Texas Commission on Environmental Quality submitted Texas Emission Reduction Plan rules at 30 TAC, Chapter 114, Subchapter K, Mobile Source Incentive Programs, Division 3, Diesel Emission Reduction Incentive Program for On-Road and Non-Road Vehicles, to EPA as a revision to the SIP. These new rules are found in 30 TAC Sections 114.620–623, 114.626, and 114.629. The State adopted revisions to these rules on January 28, 2004, and submitted them to EPA on March 3, 2004.

What Do These Rules Require?

The TERP includes a number of voluntary incentive and assistance programs designed to help improve the air quality in Texas. The programs included in TERP are as follows: Heavy-Duty Motor Vehicle Purchase or Lease Incentive Program, Light-Duty Motor Vehicle Purchase or Lease Incentive Program and Diesel Emission Reduction Incentive Grant Program for On-Road and Non-Road Vehicles ("Incentive Grant Program"). It is the Incentive Grant Program that is contained in Division 3 and that is before us as a SIP revision.

The Incentive Grant Program rules delineate the individuals and businesses that may apply for grants under TERP and provide that all applicants are subject to the criteria listed in Texas Emission Reduction Plan: Guidance for Emissions Reduction Incentive Grants Program (RG–388). Eligible projects include multiple variations of leasing or purchasing, retrofitting, repowering, or other NO_X reducing technologies for on-road and off-road diesel powered engines. The rule requires that any project funded by a grant must operate no less than 75 percent of the vehicle miles traveled or hours of operations of that project over the following five years in a nonattainment or near nonattainment county.

The plan also requires that a project, excluding infrastructure projects, must meet a cost-effectiveness not to exceed $13,000 per ton of NO_X emissions. Except in extreme circumstances, the emissions reductions gained by any project funded through a TERP grant may not be used for credit under any state or federal emission reduction credit averaging, banking or trading program. The program allows TERP reductions to be credited toward the NO_X cap and trade program in Houston but only in the unlikely event that the industrial source's compliance cost exceeds $75,000/ton. In that case, the source would be able to deposit $75,000/ton into the TERP account where the money would be utilized to achieve more cost effective mobile source reductions.

Use of TERP reductions in the NO_X cap and trade program is covered in 30 TAC 101.357, which is not the subject of this proposed action. We will address this issue when we act on the Mass Emissions Cap and Trade revisions at a later date.

What Are Oxides of Nitrogen?

Nitrogen oxides (NO_X) belong to the group of criteria air pollutants. NO_X results from burning fuels, including

gasoline and coal. Nitrogen oxides react with volatile organic compounds to form ozone or smog and are also major components of acid rain.

What Areas in Texas Will This Action Affect?

The TERP will provide potential emission reductions in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hayes, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, Wilson, and any other county located within an area of Texas designated as nonattaiment for ground-level ozone.

Why Are We Proposing To Approve This Submittal?

TERP Division 3 is a measure relied upon in State Implementation Plans for the Early Action Compact areas of Austin, San Antonio, and Northeast Texas, as well as the Houston/Galveston Attainment Demonstration, and the Dallas/Fort Worth 5 percent Increment of Progress Plan. The amount of emission reductions projected for the TERP program is delineated in each of these plan revisions. These reductions are assisting areas to come into attainment with the National Ambient Air Quality Standard for ozone.

Diesel engines are targeted due to their relatively high NO_X emissions and their long operational life, which makes the introduction of newer cleaner engines into a fleet a long term process with normal turnover. The TERP will offset the incremental cost of projects that will reduce oxides of nitrogen emissions from heavy duty diesel trucks and construction equipment in nonattainment areas. This is an incentive to owners and operators to upgrade their fleets at an expedited rate. The upgrade of these fleets will reduce the amount of NO_X emissions to the atmosphere. We are proposing to approve these revisions to the Texas SIP because they will contribute to the attainment of the ozone standard, and therefore strengthen the SIP.

Proposed Action

TERP Division 3 is consistent with EPA guidance for an economic incentive program. See "Improving Air Quality With Economic Incentive Programs," EPA Office of Air and Radiation, EPA–452–/R–01–001 (Jan. 2001). Therefore, we propose to approve the TERP Division 3 rules.

Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." 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 it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it approves a state program.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 4, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–9480 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket Number: MARAD–2005–21105]

RIN 2133–AB50

Application Fee Increase for Administrative Waivers of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to increase the application fee for administrative waivers of the coastwise trade laws from $300 to $500. The increased fee would align the application fee with the actual cost of processing and issuing each waiver.

DATES: Comments are due June 13, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2005–21105] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, Office of Ports and Domestic Shipping, Maritime Administration, MAR–830, 400 7th St., SW., Rm. 7201 Washington, DC 20590; telephone: (202) 366–5506.

SUPPLEMENTARY INFORMATION: Title V of the Independent Offices Appropriations Act of 1952 ("IOAA"; 31 U.S.C. 9701) authorizes Federal agencies to establish and collect user fees. The statute provides that each service or thing of value provided by an agency should be self-sustaining to the extent possible, and that each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, the policy or interest served, and other relevant factors. 31 U.S.C. 9701.

The primary guidance for implementation of the IOAA is Office of Management and Budget (OMB) Circular No. A–25 ("User Charges," July 8, 1993). Circular A–25 directs agencies to assess user charges against identifiable recipients for special benefits derived from Federal activities beyond those received by the general public. Circular A–25, section 6. Circular A–25 further directs agencies, with limited exceptions, to recover the full cost of providing a Government service from the direct recipients of special benefits. Section 6(d) of Circular A–25 defines "full cost" as including "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service."

Pursuant to these directives, MARAD is proposing to increase the application fee for administrative waivers of the coastwise trade laws under 46 CFR part 388 for eligible small vessels. Under 46 CFR part 388, owners of small passenger vessels may apply for waivers of the U.S.-build requirements of the Passenger Vessel Services Act and section 27 of the Merchant Marine Act, 1920, to allow the carriage of no more than 12 passengers for hire in the coastwise trade. Because waivers under part 388 represent special benefits to identifiable recipients (*i.e.*, vessel owners) that are beyond the benefits and services normally received by the general public, the IOAA and Circular A–25 direct MARAD to assess user fees for providing this service. The current application fee for a waiver is $300. MARAD proposes to increase this fee to $500 as set forth below.

Following the principles embodied in Circular A–25, MARAD examined the costs associated with processing and issuing waivers under part 388 to determine if the current $300 fee recovers the full costs of administering the program. The main cost components of the program include direct and indirect personnel costs and **Federal Register** publication costs. Our review of the program determined that average personnel costs for processing each uncontested application are $204.50 and $1,118.50 for each contested application (on average, 7% of all waiver applications are contested, based on the 236 applications sampled for our analysis). Thus, the total average personnel costs are $268.48 for processing each application. The second main cost component of the program is the cost of publishing notices of waiver applications in the **Federal Register**. The current **Federal Register** publication cost is $155 per column and the average length of a public notice published for this program is 1.5 columns. Thus, the total average publication cost is $232.50. The sum total of personnel costs and **Federal Register** publication costs is $500.98. Therefore, MARAD is proposing to raise the application fee from $300 to $500 in order to recover these costs.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not likely to result in an annual effect on the economy of $100 million or more. This proposed rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Maritime Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. While this proposed rule, if promulgated, will affect businesses that qualify as small entities under Small Business Administration guidelines, MARAD does not believe that the modest increase in this one-time, non-recurring fee (unless an applicant must reapply due to a revocation) will result in a significant economic impact on small entities. Further, MARAD is required under Federal directives to assess recipients of special governmental services reasonable charges to recover the costs of providing such services.

Federalism

We have analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this proposed rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination

with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this proposed rule is required.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves this objective of U.S. policy.

Paperwork Reduction Act

This proposed rule contains information collection requirements covered by the Office of Management and Budget approval number 2133–0529. The changes have no impact on the reporting burden.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the Maritime Administration amends 46 CFR chapter II, subchapter J, by revising part 388 as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

1. The authority citation for part 388 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b); Public Law 105–383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66.

2. Amend § 388.3 by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 388.3 Application and fee.

(a) * * *

(1) The application form contained on MARAD's Web site at *http://www.marad.dot.gov* may be submitted electronically with credit card or Automated Clearinghouse (ACH) payment of the $500 application fee.

(2) Alternatively, applicants may send written applications to Small Vessel Waiver Applications, Office of Ports and Domestic Shipping, MAR–830, Room 7201, 400 7th St., SW., Washington, DC 20590. Written applications need not be in any particular format, but must be signed, be accompanied by a check for $500 made out to the order of "Maritime Administration", and contain the following information:

* * * * *

Dated: May 6, 2005.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–9433 Filed 5–11–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 050405E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper

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

ACTION: Receipt of petition for emergency regulations or interim measures; request for comments.

SUMMARY: NOAA announces receipt of a petition for emergency regulations or interim measures, filed by The Coastal Conservation Association (CCA) under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Administrative Procedure Act. CCA has petitioned the U.S. Department of Commerce to promulgate emergency regulations or interim measures to address overfishing of red snapper in the Gulf of Mexico primarily by further reducing bycatch of juvenile red snapper in the Gulf shrimp fishery. NMFS is soliciting public comment on this petition to help determine whether NMFS should proceed with the development of regulations suggested by the petitioner.

DATES: Comments will be accepted through 5 p.m. eastern time July 11, 2005.

ADDRESSES: You may submit comments on this petition for rulemaking, including its objectives, the need for such regulation, alternative approaches, and any other comments by any of the following methods:

- E-mail: *RSPetition@noaa.gov*. Include in the subject line the following document identifier: RSPetition.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Phil Steele, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308; Attention: Phil Steele.

Copies of the petition are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–551–5784, fax 727–824–5308, e-mail *Phil.steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The petition filed by CCA states the red snapper stock in the Gulf of Mexico is overfished and undergoing overfishing. Although the petition acknowledges the directed red snapper commercial and recreational sectors share responsibility for rebuilding the stock, the petition asserts failure of bycatch reduction devices (BRDs), required in the Gulf shrimp fishery to meet established bycatch reduction standards, makes recovery of the Gulf red snapper fishery unlikely and ensures years of continued overfishing of red snapper. The petition seeks emergency regulations or interim measures primarily to stop the overfishing resulting from excessive bycatch of juvenile red snapper in the Gulf shrimp fishery.

The CCA petition states that the prevention of overfishing and recovery of the red snapper stock is predicated on at least a 44–percent reduction in bycatch of juvenile red snapper by the Gulf shrimp fishery. Further, because recent research indicates current BRD

use, in practice, yields only a 12–percent bycatch reduction, the existing plan for preventing overfishing and rebuilding the red snapper stock must be declared a failure. The petition seeks implementation of emergency regulations or interim measures that would result in bycatch reduction sufficient to allow the red snapper stock to rebuild within the time period established in the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico. The petition states that such measures should include strict bycatch quotas tracked by observer data, bag limits, TAC restrictions, time and area closures or restrictions, improved BRDs, season limitations, seasonal closures, and other reduction measures. In addition, a firm target for bycatch reduction of between 60 percent and 80 percent of historic levels should be set, with a time line established that achieves that target within the shortest time possible. The petition also proposes a mandated effort reduction program for the Gulf shrimp fleet. The petition concludes that the directed recreational and commercial red snapper sectors have already adopted many of the measures necessary to rebuild the stock.

NMFS is soliciting public comment on this petition. Comments received by 5 p.m. eastern time July 11, 2005 will be considered by NMFS in determining whether to proceed with the development of regulations suggested by the petition. Upon determining whether to open the rulemaking suggested by the petition, the Assistant Administrator for Fisheries, NOAA, will publish a notice of the agency's decision or action in the **Federal Register**.

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

Dated: May 9, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–9517 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 91
Thursday, May 12, 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

Farm Service Agency

Request for Extension and Revision of a Currently Approved Information Collection; Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension and revision of currently approved information collection used in support of the Emergency Conservation Program (ECP).

DATES: Comments on this notice must be received on or before July 12, 2005, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Contact Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, USDA, FSA, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513; telephone (202) 690–0571.

SUPPLEMENTARY INFORMATION:

Title: Emergency Conservation Program.

OMB Control Number: 0560–0082.

Expiration Date: October 5, 2005.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget Control Number 0560–0082, as identified above, allows FSA to effectively administer the regulations under the ECP. The regulations at 7 CFR part 701 set forth basic policies, program provisions, and eligibility requirements for owners and operators to enter into agreement with to apply for financial and technical assistance and for making cost-share payments under the ECP.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours (15 minutes) per response.

Respondents: Owners, operators and other eligible agricultural producers on eligible farmland.

Estimated Number of Respondents: 100,600.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25,100.

Proposed topics for comment include: (a) Whether the collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the 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. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, USDA, FSA, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, telephone (202) 690–0571.

Signed at Washington, DC, on May 5, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–9443 Filed 5–11–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—National School Lunch Program and School Breakfast Program: School Food Safety Inspections

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public to comment on proposed information collection related to the National School Lunch Program (NSLP), including adjustments to be made as a result of the interim rule, School Food Safety Inspections.

DATES: To be assured of consideration, comments must be received by July 11, 2005.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Robert Eadie, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302. Comments will also be accepted via E-Mail submission if sent to *cndproposal@fns.usda.gov*. When submitting comments via E-mail you must include "School Food Safety Inspections" on the subject line.

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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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.

All responses to this Notice will be summarized and included in the request

for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Todd J. Barrett, Acting Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION: *Title:* National School Lunch Program Regulations.

OMB Number: 0584–0006.

Expiration Date: 07/31/2007.

Type of Request: Revision of a currently approved collection.

Abstract: The interim rule entitled, "National School Lunch Program and School Breakfast Program: School Food Safety Inspections" will amend the NSLP and School Breakfast Program (SBP) regulations to implement Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265 which amended Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758). Specifically, Section 111 of Public Law 108–265 increases the number of mandatory food safety inspections for schools participating in the NSLP or SBP from one to two per year; requires schools to post the most recent inspection report in a visible location and to release a copy of the report to the public upon request; and requires States to annually audit the school food safety inspections and to submit the results to the Food and Nutrition Service for each of fiscal years 2006 through 2009.

Estimate of Burden: The school food safety inspection provisions of the interim rule entitled, "National School Lunch Program and School Breakfast Program: School Food Safety Inspections," apply to schools participating in at least one of the programs. Schools that participate in the SBP also participate in the NSLP. Therefore, the entire information collection burden for the school food safety inspection provisions will be contained in the information collection for NSLP, OMB–0584–0006, even though the provisions pertain to both the NSLP and SBP. The current inventory for this collection is 10,448,411 burden hours. When the interim rule entitled, "National School Lunch Program and School Breakfast Program: School Food Safety Inspections" is published and the burden package is approved, the reporting burden will increase by 10,468 hours and the recordkeeping burden will increase by 21,960 hours. The total increase in burden for NSLP, OMB–0584–0006 will be 32,428 hours; for a total of 1,307,886 reporting hours and 9,172,953 recordkeeping hours.

Reporting—1,307,886 hours.

Number of Respondents: 121,426 respondents.

Average Number of Responses per Respondent: 11 responses.

Estimated Total Annual Responses: 2,416,242.

Estimated Time per Response: .54 hours/response.

Recordkeeping—9,172,953 hours.

Number of Respondents: 121,426 respondents.

Average Number of Responses per Respondent: 16 responses.

Estimated Total Annual Responses: 29,385,463.

Estimated Time per Response: .31.

Dated: April 26, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–9450 Filed 5–11–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, May 16th, 2005. The Madera Resource Advisory Committee will meet at the Bass Lake Ranger District Office, North Fork, CA 93643. The purpose of the meeting is: review the goals for FY 2005 RAC proposals and draft public announcement for a call for project proposals on the Sierra National Forest.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, May 16th, 2005. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Bass Lake Ranger District Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643; (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of goals for FY 2005 RAC proposals; (2) draft public announcement.

Dated: May 5, 2005.

Mark Lemon,

Acting District Ranger, Bass Lake Ranger District, Sierra National Forest.

[FR Doc. 05–9458 Filed 5–11–05; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Maine Advisory Committee will convene at 10 a.m. and adjourn at 11 a.m., Monday, May 23, 2005. The purpose of the conference call is to conduct member introductions and review the Committee's draft report on racial and ethnic profiling and harassment.

This conference call is available to the public through the following call-in number: 1–800–659–4363, access code: 41000088. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116), by 4 p.m. on Friday, May 20, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 4, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–9459 Filed 5–11–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–016. Applicant: University of California, Lawrence Livermore National Laboratory, 7000 East Avenue., L–516 Livermore, CA 94550. Instrument: Electron Microscope, Model Technai G² F20 S–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to perform imaging and measuring the compositions and crystal structures of extraterrestrial samples returned to Earth by NASA Apollo missions as well as to study cometary nanomaterials to be returned to Earth by the STARDUST missionin 2006. Techniques include imaging, diffraction, x–ray spectroscopy and electron energy–loss spectroscopy. It will also be used for graduate student training. Application accepted by Commissioner of Customs: April 8, 2005.

Docket Number: 05–019. Applicant: The University of Texas at Austin, Texas Materials Institute, 1 University Station, C2201, Austin, TX 78712. Instrument: Electron Microscope, Model Technai G² F20 X–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to study a broad spectrum of materials including polymers, metals, ceramics and biological tissues and specimens by determining and imaging the morphology of multiphase materials and nanoparticles, particle size and distribution, crystal structure, and the metrology of semiconductor systems. It will also be employed in the teaching of a variety of courses. Application accepted by Commissioner of Customs: April 22, 2005.

Docket Number: 05–022. Applicant: The Mayo Clinic, 200 First Street, S.W., Rochester, MN 55905. Instrument: Electron Microscope, Model Technai G² 12 TWIN. Manufacturer: FEI Company, Japan. Intended Use: The instrument is intended to be used by all Mayo Clinic researchers and investigators. Most specimens will be of biological origin. Some of the human tissue studied may involve pathological consequences. The microscope will also be used for training in basic TEM operation for graduate students, medical students and residents. Application accepted by Commissioner of Customs: April 26, 2005.

Gerald A. Zerdy,

Program Manager Statutory Import Programs Staff.

[FR Doc. E5–2354 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin, Madison, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–017. Applicant: University of Wisconsin, Madison, WI, 53706. Instrument: High Power Pulsed Ultra–Fast Fiber Laser, Model FCPA μ Jewel B–250. Manufacturer: Aisin Seiki Co., Ltd., Japan. Intended Use: See notice at 70 FR 20356, April 19, 2005. Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: A fiber laser that is readily portable with turnkey operation having: (1) a wavelength > 1300 for measuring water vapor absorption,(2) pulse energy > 1 μ J and (3) a pulse duration < 1 ps.

The National Institute of Standards and Technology advised on May 6, 2005 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager Statutory Import Programs Staff.

[FR Doc. E5–2353 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Singleton Development Corporation From an Objection by the Mississippi Department of Marine Resources

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Singleton Development Corporation.

DATES: The decision record for the Singleton Development Corporation administrative appeal will close as of the date of publication of this notice.

ADDRESSES: Materials from the appeal record are available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Jennifer Nist, Deputy Assistant General Counsel for Ocean Services, NOAA Office of the General Counsel, 301–713–2967, extension 207.

SUPPLEMENTARY INFORMATION: Singleton Development Corporation has filed a notice of appeal with the Secretary of Commerce pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations found at 15 CFR part 930, subpart H. Singleton Development Corporation appeals an objection raised by the Mississippi Department of Marine Resources to a consistency certification contained within its application for a U.S. Army Corps of Engineers permit necessary to expand a residential subdivision. The

proposed site consists of 3.89 acres of wetlands.

The CZMA requires a notice be published in the **Federal Register**, indicating the date on which the decision record has been closed. A final decision on this appeal must be issued no later than 90 days after publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing, within the 90-day period, a subsequent notice explaining why a decision cannot be issued within this time frame. In this event, a final decision must be issued no later than 45 days after publication of the subsequent notice. 16 U.S.C. 1465(b).

For additional information about this appeal contact Jennifer Nist, 301–713–2967, extension 207.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: May 5, 2005.

James R. Walpole,

General Counsel.

[FR Doc. 05–9523 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050905B]

New England Fishery Management Council; Public Meetings

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

ACTION: Public Meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel in May, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, May 31, 2005, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel will consider and prioritize management measures and annual allocations to be adjusted in Framework Adjustment 18 for the 2006 and 2007 fishing years. Alternatives may include, but are not limited to; the following general management measures: Triggered adjustments to annual allocations and area closures through Notice Action, General Category fishery management, bag tags and standard bags (landings monitoring and compliance), allocations for vessels with small dredge permits, research proposal review process, research priorities, and fishing year alignment and framework adjustment frequency. In addition, the Advisory Panel may consider the following changes for the controlled access areas; rotation management fishing mortality targets by area, allocations of trips or pounds in controlled access areas, Hudson Canyon Area rotation management area policy, Elephant Trunk Area allocations for 2007; crew limits in controlled access areas; IFQ allocations in controlled access areas; sector allocations (harvest cooperatives or other entities); temporary transferability/stacking of controlled access allocations, improvements in the broken trip exemption program, and seasonal access to minimize bycatch and effects on spawning (Georges Bank access areas and Elephant Trunk Area in 2007). The Advisory Panel may also consider setting hard or target Total Allowable Catch (TAC) limits for open fishing areas. The priority recommendations will be reported to the Scallop Oversight Committee meeting on June 1, 2005.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 9, 2005.

Emily Menashes,

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

[FR Doc. E5–2337 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050905C]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Meeting of the North Pacific Fishery Management Council's Non-Target Species Committee.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will meet at the Alyeska Prince Hotel, May 31, 2005, in Ballroom C, 2 pm - 6 pm.

DATES: May 31, 2005.

ADDRESSES: Alyeska Prince Hotel, P.O. Box 249, Girdwood, AK 99587

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, Phone: 907–271–2809.

The Non-Target Species Committee will meet on May 31 to review a template for a planned discussion paper on rockfish management. The committee will determine whether the template should be expanded for use in preparing the full discussion paper.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

April 9, 2005.

Emily Menashes,

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

[FR Doc. E5–2343 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050905A]

Fisheries of the Gulf of Mexico; Southeastern Data, Assessment, and Review (SEDAR); Gulf of Mexico Vermillion Snapper, Greater Amberjack, and Gray Triggerfish

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

ACTION: Notice of SEDAR Workshops for Gulf of Mexico vermillion snapper, greater amberjack, and gray triggerfish.

SUMMARY: The SEDAR assessments of the Gulf of Mexico stocks of vermillion snapper, greater amberjack, and gray triggerfish will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. This is the ninth SEDAR. See SUPPLEMENTARY INFORMATION.

DATES: The Data Workshop will take place June 20 – 24, 2005; the Assessment Workshop will take place August 22 – 26, 2005; and the Review Workshop will take place December 12 – 16, 2005. See **SUPPLEMENTARY INFORMATION** for specific information regarding dates, times and locations for the meetings.

ADDRESSES: The Data Workshop will be held at the Hotel Monteleone, 214 Royal Street, New Orleans, LA 70130. Phone: (504) 523–3341. The Assessment Workshop will be held at the Wyndham Grand Bay, 2669 South Bayshore Drive, Miami FL 33133. Phone:(305) 868–9600. The Review Workshop will be held at the Hotel Monteleone, 214 Royal Street, New Orleans, LA 70130. Phone: (504) 504–523–3341.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Gulf of Mexico Fishery Management Council (GMFMC), 3018 North U. S. Highway 301, Tampa, FL 33619. Phone: (813) 228–2815 or (888) 833–1844. John Carmichael, SEDAR Coordinator, 1 Southpark Circle # 306, Charleston, SC 29414. (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop and the Stock Assessment Workshop is a stock assessment report, which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The Assessment Report is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary which reports Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the regional Fishery Management Councils, the SERO, and the SEFSC and include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's International experts; and staff of Councils, Commissions, and state and Federal agencies.

SEDAR 9 Workshop Schedule

June 20 – 24, 2005; SEDAR 9 Data Workshop

June 20, 2005: 1 p.m. – 8 p.m.;
June 21 – 23, 2005: 8 a.m. – 8 p.m.;
June 24, 2005: 8 a.m. – 1 p.m.

An assessment data set and documentation will be developed during the Data Workshop. The assessment data set will include catch statistics, discard estimates, length and age composition, fishery descriptions, biological sampling intensity, fishery dependent and fishery independent monitoring results, and life history characteristics.

August 22 – 26, 2005; SEDAR 9 Assessment Workshop

August 22, 2005: 1 p.m. – 8 p.m.;
August 23 – 25, 2005: 8a.m. – 8 p.m.;
August 26, 2005: 8 a.m. – 1 p.m.

Using the data set collected from the Data Workshop, participants will develop population models, evaluate the status of the stock, estimate population benchmarks and Sustainable Fisheries Act criteria, and complete the Assessment Report.

December 12 – 16, 2005; SEDAR 9 Review Workshop

December 12, 2005: 1 p.m. – 8 p.m.;
December 13 – 15, 2005: 8 a.m. – 8 p.m.;
December 16, 2005: 8 a.m. – 1 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary. Panelists will summarize the assessment results in an Advisory Report.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

May 9, 2005.

Emily Menashes,

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

[FR Doc. E5–2336 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050905D]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 127th meeting and Advisory Panel meetings to consider and take actions on fishery management issues in the Western Pacific Region.

DATES: The 127th Council meeting, Advisory Panel meetings and public hearings will be held on May 30 - June 2, 2005. For specific times, and the agenda, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 127th Council meeting, Advisory Panel meetings and public hearings will be held at the Ala Moana Hotel,410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are

addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Monday, May 30, 2005

Standing Committee

1. 2 p.m. – 4 p.m. Executive, Budget and Program Standing Committee

Tuesday, May 31, 2005

2. 7 a.m. – 9:30 a.m. Ecosystem and Habitat Standing Committee
3. 7 a.m. – 9:30 a.m. Pelagic and International Standing Committee
4. 9:30 a.m. – Noon Bottomfish Standing Committee
5. 9:30 a.m. – Noon Indigenous Rights Standing Committee

Schedule and Agenda for Council Advisory Panel Meetings

Tuesday, May 31, 2005

7:30 a.m. – Noon

1. Introduction and Overview
2. Council Action Items
A. Bigeye Overfishing
a. Pelagic Plan Team Recommendations
b. SSC Recommendations
B. Hawaii Bottomfish Overfishing
a. Bottomfish Plan Team Report and Recommendations
b. SSC Recommendations
C. Data Intiatives
a. Pelagic and Bottomfish Plan Team Recommendations
b. SSC Recommendations
D. Fishery Ecosystem Plans
a. Coral Reef Ecosystem Plan Team Recommendations
b. SSC Recommendations
E. Black Coral Research and Management
a. Precious Coral Plan Team Recommendations
b. SSC Recommendations

1 p.m. – 5 p.m.

3. Island Area Reports
A. American Samoa
B. Guam
C. CNMI
D. Hawaii

6:30 p.m. – 9 p.m.

4. Discussion on Island Area Issues
A. American Samoa
B. Guam
C. CNMI
D. Hawaii

Wednesday June 1, 2005

7:30 a.m. – Noon (1 p.m. – 5 p.m. if required)

5. Sub-Panel Chairman Reports
A. Commercial Advisory Panel Report and Recommendations
B. Recreation Advisory Panel Report and Recommendations
C. Indigenous and Subsistence Advisory Panel Reports and Recommendations
D. Ecosystem and Habitat Advisory Panel Report and Recommendations
6. Full Panel Discussion and Recommendations
7. Other Business

Schedule and Agenda for Public Hearings

Tuesday, May 31, 2005

11:30 a.m. – Noon

Black Coral Management Options

2:30 p.m. – 3 p.m.

Community Demonstration Projects Program AP Recommendations

5 p.m. – 5:30 p.m.

Hawaii Bottomfish Overfishing Plan

Thursday, June 2, 2005

9:30 a.m. – 10 a.m.

Bigeye Tuna Overfishing Plan

11:30 a.m. – Noon

MPA Objectives and Goals, Criteria for Establishing Monitoring and Evaluating MPAs First Draft.

For more information on public hearing items, see Background Information.

The agenda during the full Council meeting will include the items listed here.

Schedule and Agenda for Council Meeting

1 p.m – 6:30 p.m. Tuesday, May 31, 2005

1. Introductions
2. Approval of agenda
3. Approval of 126th meeting minutes
4. Island reports
A. American Samoa
B. Guam
C. Hawaii
D. CNMI
5. Reports from fishery agencies and organizations
A. Department of Commerce
a. NMFS
i. Pacific Islands Regional Office
ii. Pacific Islands Fisheries Science Center
b. National Marine Sanctuary Program
i. Pacific Sanctuaries update
c. NOAA General Counsel Southwest Region/Pacific Islands Region
B. The Department of the Interior - The U.S. Fish and Wildlife Service (USFWS)
C. State Department
6. Enforcement/vessel monitoring systems A. US Coast Guard activities
B. NOAA Office of Law Enforcement (OLE) Activities
C. Status of Violations

8 a.m – 5:30 p.m. Wednesday June 1, 2005

7. Protected Species
A. Olive Ridley Sea Turtle BiOp
B. Report on Marine Mammal Advisory Committee
C. Report on Turtle Advisory Committee
8. Precious Coral Fisheries
A. Black Coral Management
a. State of Hawaii Black Coral Research
b. Black Coral Management Options (ACTION ITEM)
B. Advisory Panel Recommendations
C. Plan Team Recommendations
D. SSC Recommendations
9. Fishery Rights of Indigenous Peoples
A. Community Demonstration Projects Program AP Recommendations (ACTION ITEM)
B. South Pacific Community (SPC)-Council- Food and Agriculture Organisation (FAO) Community-Based Management Workshop.
C. SSC Recommendations
D. Standing Committee Recommendations
E. Advisory Panel Recommendations
10. Bottomfish Fisheries
A. Hawaii Bottomfish Overfishing Plan (ACTION ITEM)
B. Plan Team Recommendations
C. SSC Recommendations
D. Standing Committee Recommendations
E. Advisory Panel Recommendations

6 p.m. – 9 p.m. Wednesday June 1, 2005

11. Fishers Forum
A. Fish Tagging Programs
B. Bottomfish and Bigeye Tuna Overfishing

8 a.m – 6 p.m. Thursday June 2, 2005

12. Pelagic Fisheries
A. Bigeye Overfishing Plan (ACTION ITEM)
B. Swordfish Season Report
C. Stock Assessment Report and Status
D. Plan Team Recommendations
E. SSC Recommendations
F. Standing Committee Recommendations
G. Advisory Panel Recommendations
13. Ecosystems and Habitat
A. MPA Objectives and Goals, Criteria for Establishing Monitoring and Evaluating MPAs First Draft (ACTION ITEM)
B. Fishery Ecosystem Plans
a. Strategic Level Alternatives for Marianas FEP

b. Fishery Ecosystem Plan Workshop
C. Plan Team Recommendationss
D. SSC Recommendations
E. Advisory Panel Recommendations
F. Standing Committee Recommendations
14. Program Planning and Budget
A. Hawaii Data Collection and Reporting Options
B. Update on Legislation
C. Magnuson Act Reauthorization
D. Advisory Panel Recommendations
E. Standing Committee Recommendations
15. Administrative Matters
A. Financial Reports
B. Administrative Report
C. Meetings and Workshops
D. Advisory Group Changes
E. Standing Committee Recommendations
16. Other Business

Background Information

1. Black Coral Management Options (Initial Action)

A public hearing will be held on initial action to implement a framework adjustment to the Precious Corals FMP to revise the minimum harvest size for black corals (Antipathes sp.) due to the effects of Carijoa riisei and harvest pressure on black corals in the Main Hawaiian Islands. Based on comments received during Precious Coral Plan Team meetings, as well as subsequent SSC, Council, and public working group meetings, the Council developed an options document that includes: (1) Removing the exemption allowing harvest of black corals with a minimum base diameter of 3/4 inch (1.905 cm) or minimum height of 36 inches (0.9144 m) by persons who reported harvest to the State of Hawaii within 5 years prior to April 17, 2002; (2) establishing a 48–inch(1.2192 m)minimum height only requirement for harvest of black coral colonies; (3) eliminating any minimum base diameter requirement; and (4) eliminating any minimum height requirement. At its 127th meeting, the Council may take initial action to identify and support a range of alternatives, including selection of a preliminary preferred alternative, to be further analyzed in a framework adjustment to the Precious Coral Fishery Management Plan.

2. Community Demonstration Projects Program AP Recommendations (Action Item)

A public hearing will be held on initial action to implement a framework adjustment to the Precious Corals FMP to revise the minimum harvest size for black corals (*Antipathes* sp.) due to the effects of *Carijoa riisei* and harvest pressure on black corals in the Main Hawaiian Islands. Based on comments received during Precious Coral Plan Team meetings, as well as subsequent SSC, Council, and public working group meetings, the Council developed an options document that includes: (1) Removing the exemption allowing harvest of black corals with a minimum base diameter of 3/4 inch(1.905 cm) or minimum height of 36 inches (0.9144 m) by persons who reported harvest to the State of Hawaii within five years prior to April 17, 2002; (2) Establishing a 48–inch(1.2192 m)minimum height only requirement for harvest of black coral colonies; (3) eliminating any minimum base diameter requirement; and (4) eliminating any minimum height requirement. At its 127th meeting, the Council may take initial action to identify and support a range of alternatives, including selection of a preliminary preferred alternative, to be further analyzed in a framework adjustment to the Precious Coral Fishery Management Plan.

3. Hawaii Bottomfish Overfishing Plan (Initial Action)

The Council is currently reviewing its responsibilities for sustainable fisheries under the Magnuson-Stevens Act, with respect to National Standard 1, which requires Councils to prevent overfishing and keep resources from becoming overfished. Under the reference points adopted by the Council, bottomfish resources in Hawaii are likely to soon be determined by the Secretary of Commerce to be experiencing overfishing due to excessive fishing effort in the Main Hawaiian Islands (MHI). Once that determination is made, the Council will have 1 year to recommend management measures to reduce fishing effort in the MHI bottomfish fishery. The Council will consider taking action to address two concerns: (1) the lack of data regarding bottomfish fishing mortality by recreational fishermen in the MHI and (2) the need to reduce bottomfish fishing mortality around the MHI to prevent overfishing on MHI bottomfish resources. Options to be considered by the Council to address data collection include:

1. No Option
2. Expand the Hawaii Marine Recreational Fishery Survey
3. Implement "Drop box" reporting
4. Require Federal permits and logbooks for recreational bottomfish fishermen
5. Conduct targeted surveys of Hawaii recreational bottomfish fishermen using the State's bottomfish management registry

Options to be considered by the Council to address excess fishing mortality in the MHI include:

1. No action.
2. Incorporate the State's Main Hawaiian Islands bottomfish management regime into Federal regulations.
3. Establish new bottomfish area closures in Federal waters in the MHI in addition to the current state closures:
3a. Close Federal waters around Penguin Banks to bottomfish fishing
3b. Close Federal waters around Middle Bank to bottomfish fishing
4. Establish a control date for future MHI fishery participation.
5. Establish a limited entry program for the MHI fishery.
6. Establish individual fishing quotas for MHI fishermen.
7. Establish a Federal permit and logbook program for all fishermen targeting bottomfish on Penguin Banks or Middle Bank.
8. Establish July-September seasonal closures for targeting and landing of bottomfish from the MHI

4. Bigeye Tuna Overfishing Plan (Final Action)

In December 2004, the Western Pacific and Pacific Councils were officially notified by the National Marine Fisheries Service, on behalf of the Secretary of Commerce, that overfishing is occurring on bigeye tuna in the Pacific. As required by the Magnuson-Stevens Act (16 U.S.C. 1854 (e)(3)) and the implementing regulations at 50 CFR 600.310(e)(3), the Councils must take action to address overfishing within one year of an identification by the Secretary that overfishing is occurring. The overfishing determination was made in the annual report on the status of fisheries in 2003, which was transmitted to Congress on June 15, 2004, which means that the Council has until June 14, 2005 in which to take remedial action to end overfishing. Accordingly, 126th Council Meeting recommended that Council staff develop a plan to address BET overfishing in the Pacific Ocean and it elements and recommendations for domestic and international fisheries.

The principal domestic measure recommended by the Council at it 126th meeting was that the Hawaii offshore tuna handline, private FAD, vertical longline and short-line (mainline < 1 nm) fisheries in the EEZ be federally permitted fisheries with log books, limited entry programs, and observers where appropriate. However, a more recent review of the data on the offshore

tuna handline by the Pelagic Plan Team (PPT)in May 2005, suggests that the available data on landings may not require a limited entry program at this time. However, there were concerns that the reported statistics for this fishery (which is actually a mix of different hook and line gears) may be underestimates, and that serious efforts should be made to pursue accurate landings data for the fishery. The PPT also approved a protocol to be incorporated into the Pelagics FMP by which the Council would take action on international management of HMS species. This includes ensuring Council inclusion in US delegations to international fishery management meetings and the drafting of position papers on measures to reduce overfishing and rebuild stocks.

The Council will review PPT and SSC comments and recommendations and may take final action on an FMP amendment on how to deal with BET overfishing both in the domestic and international fisheries.

5. MPA Objectives and Goals, Criteria for Establishing Monitoring and Evaluating MPAs First Draft (Action Item)

The Council MPA Working Group is developing a guide for Council family reference when working on MPA issues. "MPA Goals and Objectives, and Criteria for Establishing, Monitoring and Evaluating MPAs" is a dynamic document, updated with the best available science. The Document incorporates a flowchart illustrating a NEPA based process to establish, monitor and evaluate MPAs, and criteria for establishing, monitoring and evaluating MPAs are detailed. The Council is asked to review a first draft of this document.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

Dated: May 9, 2005.

Emily Menashes,

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

[FR Doc. E5–2338 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041905B]

Endangered Species; File No. 1356

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Inwater Research Group Inc. has been issued a modification to scientific research Permit No. 1356.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

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;

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5517.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 23, 2005, notice was published in the Federal Register (70 FR 8767) that a modification of Permit No. 1356, issued July 11, 2002 (67 FR 45959), had been requested by the above-named organization. The requested modification has been granted under the authority of 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 222–226).

The modification authorizes the Holder to attach satellite transmitters to a subset of the green sea turtles already authorized to be captured under the existing permit. It also allows researchers to conduct sampling all months of the year and to modify their study area to include a 30 kilometer area extending south, west and north of the Marquesas Keys.

Issuance of this modification, as required by the ESA was based on a finding that such permit modification (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 6, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–9516 Filed 5–11–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Draft Environmental Impact Statement for the Preparation of a Special Area Management Plan and Associated 404 Permit Actions for the San Juan Creek and Western San Mateo Creek Watersheds, Orange County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Revised Notice of Intent (NOI).

SUMMARY: The Corps of Engineers (Corps) published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) in the **Federal Register** (Vol. 66, No. 76, pages 20135–20136) on April 19, 2001, for a Special Area Management Plan (SAMP) within the San Juan Creek and western San Mateo Creek Watersheds. The Notice of Intent stated that the eventual document would be a joint state and federal document in coordination with the California Department of Fish and Game (Department). The Department intended to prepare an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act for the Department's proposed Master Streambed Alteration Agreement (MSAA), a proposed state program analogous to the SAMP. It is now necessary to revise the Notice of Intent to reflect that the doucment will now be a federal document and not a joint federal and state document.

Scoping commenced on April 19, 2001 with the publication of the original Notice of Intent in the **Federal Register**. In addition, the Corps issued a special public notice on the SAMP dated April 18, 2001, to the general public. A public scoping meeting was held on May 8, 2001, in San Juan Capistrano, California.

All comments received during the special public notice comment period between April 19, 2001, and May 18, 2001, and during the public meetings are being considered in this process. A new scoping period is not being started with the revised NOI.

FOR FURTHER INFORMATION CONTACT: Mr. Jae Chung, Regulatory Branch, CESPL–CO–RS, U.S. Army Corps of Engineers, Los Angeles District, 915 Wilshire Boulevard, Los Angeles, California 90017.

SUPPLEMENTARY INFORMATION: The Corps is developing the SAMP to address issues under Section 404 of the federal Clean Water Act for waters of the U.S., including wetlands, subject to the Corps' jurisdiction. The Department is also developing a parallel process known as the MSAA to address issues under Section 1600 *et seq.* of the state Fish and Game Code for streambeds subject to the Department's jurisdiction. The original Notice of Intent reported the Corps' intent to prepare a joint document (EIS/EIR) with the Department to address common issues for the SAMP and MSAA processes.

It subsequently was decided that the EIS for the SAMP document and associated Section 404 permit actions would be solely a federal document. The MSAA would be better analyzed in the joint EIS/EIR document for the Natural Community Conservation Program (NCCP)/Habitat Conservation Plan (HCP) for the South Subregion of Orange County, a comprehensive planning process prepared in conjunction with the U.S. Fish and Wildlife Service to address long-term protection of sensitive species. Given the Department's participation in the NCCP/HCP, the analysis of the MSAA is more appropriate in the context of the Department's larger, more comprehensive role in the NCCP.

The Corps will continue to coordinate with the Department and with the U.S. Fish and Wildlife Service to address issues common among the SAMP, the MSAA, and the NCCP/HCP. All three agencies will continue to communicate on refining alternatives and long-term management plans for natural resources, which should be conserved under these plans. The Corps may publish the draft EIS for the SAMP before the draft EIR/EIS document for the MSAA and the NCCP/HCP. Completion of a SAMP final EIS document is contingent upon completion of consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the federal Endangered Species Act, because the SAMP and associated Section 404 permit actions may affect listed threatened and/or endangered species and/or adversely modify the critical habitat of listed threatened and/or endangered species.

The draft EIS is expected to be issued for public review in Fall 2005.

James A. DeLapp,

Major, U.S. Army, Acting District Engineer.

[FR Doc. 05–9465 Filed 5–11–05; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 11, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 9, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Experimental Sites Initiative—Data Collection Instrument.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 1,650.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of nine experiments. This effort will assist ED/FSA in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. The experiments cover major financial aid processes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2758. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–9521 Filed 5–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 11, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 9, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of Mandatory-Random Student Drug Testing: Baseline Data Collection Instruments.

Frequency: On occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 6,000.

Burden Hours: 3,000.

Abstract: Initial data collection for an impact evaluation of a Department program that provides grants to districts to implement student drug testing.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2757. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–9522 Filed 5–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–013]

Algonquin Gas Transmission, LLC; Notice of Complaince Filing

May 4, 2005.

Take notice that on April 29, 2005, Algonquin Gas Transmission, LLC (Algonquin) submitted a compliance filing pursuant to *Algonquin Gas Transmission, LLC*, 111 FERC ¶ 61,003 (2005), issued on April 1, 2005, in Docket Nos. RP00–70–007, –008, and –009, and *Algonquin Gas Transmission, LLC*, Docket Nos. RP00–70–010 and –011, Letter Order, issued on April 21, 2005.

Algonquin states that copies of the filing were served upon all affected customers of Algonquin and interested state commissions, as well as upon all parties on the Commission's official service list in the captioned proceedings.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2325 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–316–000]

Algonquin Gas Transmission, LLC; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 15, to become effective on June 1, 2005.

Algonquin states that the purpose of this filing is to update its system map, in accordance with section 154.106 of the Commission's regulations, 18 CFR 154.106, reflecting Algonquin's principal pipeline facilities and the points at which service is rendered under the tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2362 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–130]

ANR Pipeline Company; Notice of Negotiated Rate Filing

May 5, 2005.

Take notice that on May 2, 2005, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Conoco Phillips Company pursuant to ANR's Rate Schedule ITS and two negotiated rate agreements between ANR and ENI Petroleum Exploration Co. Inc. ANR states that these agreements, as well as a related Lease Dedication Agreement, entered into negotiated rate agreements. ANR requests that the Commission accept and approve these agreements to be effective May 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2311 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–294–000]

ANR Pipeline Company; Notice of Tariff Filing

May 4, 2005.

Take notice that on April 29, 2005, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Forty-First Revised Sheet No. 17, to become effective on June 1, 2005.

ANR states that the purpose of the filing is to implement the annual reconciliation of its cashout program for the year 2004 pursuant to section 15 of the general terms and conditions of its tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2330 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–323–000]

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2005.

Take notice that on May 2, 2005, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective June 2, 2005:

Seventh Revised Sheet No. 200
First Revised Sheet No. 225
First Revised Sheet No. 226

Black Marlin further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2369 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–312–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2005.

Take notice that on April 29, 2005, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective June 1, 2005:

Thirteenth Revised Sheet No. 6
Fifth Revised Sheet No. 6A

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism.

Canyon states that copies of the filing are being mailed to its 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2320 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–293–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

May 4, 2005.

Take notice that on April 27, 2005, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 100, to become effective May 1, 2005.

Chandeleur states that the enclosed First Revised Sheet No. 100 reflects an updated sheet number to correlate with a change in Chandeleur's system map. Chandeleur states that such change was necessitated by the purchase and integration of the MAGS facilities which was authorized by Commission Order dated May 11, 2004 in Docket No. CP04–48–0001.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2329 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–144–000; CP05–150–000; CP05–151–000, CP05–152–000]

Columbia Gas Transmission Corporation and Hardy Storage Company, LLC; Notice of Application

May 5, 2005.

Take notice that on April 25, 2005, Hardy Storage Company, LLC (Hardy Storage), 12801 Fair Lakes Parkway, Fairfax, Virginia 22033, and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed with the Federal Energy Regulatory Commission (Commission) applications under Section 7(b) and (c) of the Natural Gas Act to develop a new underground natural gas storage facility situated in Hardy and Hampshire Counties, West Virginia, as well as abandon certain transmission assets, and to construct approximately 33.1 miles of 24-inch pipeline loop in Shenandoah, Rockingham, Page, Greene and Louisa Counties, Virginia to provide transportation service for certain Hardy Storage customers. The storage facilities will have a working gas capacity of 12.4 MMDth with a maximum deliverability of 176,000 Dth/d. The storage and pipeline facilities will include among other things, a new natural gas fired compressor station, natural gas pipelines and storage wells, all as more fully detailed in the applications.

Hardy Storage also requests the Commission to authorize blanket certificates pursuant to subpart G of 18 CFR, part 284, and subpart F of 18 CFR, part 157 of the Commission's regulations, and to approve the initial rates and pro forma FERC Gas Tariff included in their application.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any questions regarding this application should be directed to counsel for Columbia and Hardy Storage, Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273; telephone (304) 357–2359, fax (304) 357–3206.

On August 2, 2004 the Commission staff granted Hardy Storage's and Columbia's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and jointly assigned Docket No. PF04–14–000 to staff activities involving the Hardy Storage and Columbia projects. Now, as of the filing of Hardy Storage's and Columbia's applications on April 25, 2005, the NEPA Pre-Filing Process for those projects has ended. From this time forward, Hardy Storage's and Columbia's proceeding will be conducted in Docket Nos. CP05–144–000, *et al.*, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of this filing and all subsequent filings made with the Commission and must mail a copy of all filing to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, other persons do not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to this project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing

list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Process in Docket No. PF04–14–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, environmental commentors are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. Further, they will not have the right to seek court review of any final order by Commission in this proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: May 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2312 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–221–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

May 4, 2005.

Take notice that on April 29, 2005, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 2005:

Fourth Revised Sheet No. 268
Third Revised Sheet No. 269

Columbia Gulf states that, on March 1, 2005, it made a filing with the Commission to adjust its annual transportation retainage adjustment, and that on March 31, the Commission approved the filing, subject to modifications. Columbia Gulf further states that the revised tariff sheets provide the necessary clarification in compliance with the Commission's directive.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2327 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–302–000]

Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 5, 2005.

Take notice that on April 29, 2005, Discovery Gas Transmission LLC (Discovery) tendered for filing its annual cash-out report for the calendar year ending on December 31, 2004.

Discovery states that copies of the filing have been mailed to each of its customers, interested State commission's and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2318 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–322–000]

Distrigas of Massachusetts LLC; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised

Volume No. 1, Nineteenth Revised Sheet No. 94 and Original Sheet 94A, to become effective as of June 1, 2005.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2368 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–213–001]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

May 4, 2005.

Take notice that on April 29, 2005, Dominion Cove Point LNG, LP (Cove Point) submitted a compliance filing pursuant to the Commission's order accepting and suspending tariff sheet subject to conditions issued March 31, 2005 in Docket No. RP05–213–000.

Cove Point states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2326 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–324–000]

East Tennessee Natural Gas, LLC; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, East Tennessee Gas Transmission, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 15, to become effective on June 1, 2005.

East Tennessee states that the purpose of this filing is to update its system map, in accordance with section 154.106 of the Commission's regulations, 18 CFR 154.106, reflecting East Tennessee's principal pipeline facilities and the points at which service is rendered under the tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2370 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–319–000]

Egan Hub Storage, LLC; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5, to become effective on June 1, 2005.

Egan Hub states that the purpose of this filing is to update its system map, in accordance with section 154.106 of the Commission's regulations, 18 CFR 154.106, reflecting the location of Egan Hub's principal facilities and the points at which service is rendered under the tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2365 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–211–000]

EnCana Border Pipelines Limited and 1057533 Alberta Ltd.; Notice of Application To Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

May 6, 2005.

On April 29, 2005, EnCana Border Pipelines Limited (EnCana Border) and 1057533 Alberta Ltd. (Alberta Ltd.) filed an application pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, seeking authorization to transfer EnCana Border's existing NGA section 3 authorization and Presidential Permit to Alberta Ltd., all as more fully set forth in the application which is on file with the Commission and which is open to the public for inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to: C. Todd Piczak, Esq. Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, NW., Washington DC 20037 or call (202) 833–7033 or Patricia F. Godley, VanNess Feldman, P.C., 1050 Thomas Jefferson Street, NW., Washington DC 20007 or call (202) 298–1940.

Specifically, EnCana (formerly 3698157 Canada Ltd.) and Alberta Ltd. request the Commission to issue an order: (1) Transferring NGA section 3 authorization for the operation and maintenance of facilities for the importation of natural gas from the Province of Saskatchewan, Canada, into Montana; and (2) authorizing the assignment of EnCana's January 11, 2001 Presidential Permit for the operation and maintenance of facilities at the Saskatchewan, Canada/Montana import point.

The import facilities consist of (1) a gas meter station in LSD 5–4–1–14 W3M adjacent to Highway 4 approximately 0.5 mile north of the Village of Monchy, Saskatchewan; and (2) a 219.1 mm O.D. pipeline located directly south of this meter station across the Canada-United States border at Section 6 T37N R30E, extending a distance of approximately 2438 feet. The pipeline crosses the International Boundary and interconnects with a gathering line owned by EnCana Energy Resources, Inc. in Montana.

EnCana and Alberta Ltd. state that the requested transfer and assignment would facilitate the sale of facilities pursuant to a purchase and sale agreement between EnCana and Alberta.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: May 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2356 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–072]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

May 4, 2005.

Take notice that on April 28, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Twentieth Revised Sheet No. 15, to become effective May 1, 2005.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2324 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–314–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2005.

Take notice that on April 29, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 7, reflecting an effective date of June 1, 2005.

Gulfstream states that this filing is being made in accordance with section 23.2, Transporter's Use, and section 23.3, System Balancing Adjustment, of the general terms and conditions of Gulfstream's FERC Gas Tariff.

Gulfstream states that copies of its filing have been mailed to all affected 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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2322 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–049]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

May 6, 2005.

Take notice that on May 2, 2005, Gulfstream Natural Gas System, L.L.C. tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective on June 1, 2005:

Original Sheet No. 8.01p
First Revised Sheet No. 102
Second Revised Sheet No. 302
Second Revised Sheet No. 305
Second Revised Sheet No. 306

Gulfstream states that this filing is being made in connection with a negotiated rate transaction pursuant to section 31 of the general terms and conditions of Gulfstream's FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2359 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–050]

Gulfstream Natural Gas System, L.L.C.; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Original Sheet No. 8.01o, reflecting an effective date of June 1, 2005.

Gulfstream states that the purpose of this filing is to correct a typographical error on the tariff sheet submitted on April 29, 2005 in the above-captioned docket.

Gulfstream states that copies of its filing have been mailed or, if requested, transmitted by e-mail to all affected customers and interested state commissions.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2360 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–320–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4, to become effective on June 1, 2005.

Gulfstream states that the purpose of this filing is to update its system map, in accordance with section 154.106 of the Commission's regulations, 18 CFR 154.106, reflecting Gulfstream's principal pipeline facilities and the points at which service is rendered under the tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2366 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–315–000]

Horizon Pipeline Company, L.L.C.; Notice of Revenue Report

May 6, 2005.

Take notice that on May 2, 2005, Horizon Pipeline Company, L.L.C. (Horizon) filed its cost and revenue study.

Horizon states that the purpose of this filing is to comply with the requirements of the Commission's September 14, 2000 Preliminary Determination on Non-Environmental Issues and the Commission's July 12, 2001 Order Issuing Certificates and Approving Abandonment.

Horizon states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time May 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2361 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–321–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 5, to become effective on June 1, 2005.

Maritimes states that the purpose of this filing is to update its system map, in accordance with section 154.106 of the Commission's regulations, 18 CFR 154.106, reflecting Maritimes' principal pipeline facilities and the points at which service is rendered under the tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2367 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–290–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2005.

Take notice that on April 27, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective May 27, 2005:

First Revised Sheet No. 270B

Midwestern states that the purpose of this filing is to remove the tariff provision implementing the Commission's CIG/Granite State policy as now permitted by the Commission in a March 3, 2005 Order in *Williston Basin Interstate Pipeline Company*, Docket No. RP00–463–006 (110 FERC ¶ 61,210).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that

document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2317 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–313–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 5, 2005.

Take notice that on April 29, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Seventy Sixth Revised Sheet No. 9, to become effective May 1, 2005.

National states that Article II, Sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering ("IG") rate semi-annually and monthly. Further, Section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.83 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2321 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–296–000]

Northern Natural Gas Company; Notice of Tariff Filing

May 4, 2005.

Take notice that on April 29, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective as follows:

Effective June 1, 2005

2 Rev Substitute 71 Revised Sheet No. 50
2 Rev Substitute 72 Revised Sheet No. 51
2 Rev Substitute 35 Revised Sheet No. 52
2 Rev Substitute 70 Revised Sheet No. 53
21 Revised Sheet No. 54
2 Rev Substitute 19 Revised Sheet No. 56
2 Rev Substitute 30 Revised Sheet No. 60
2 Rev Substitute 10 Revised Sheet No. 60A
18 Revised Sheet No. 61
18 Revised Sheet No. 62
20 Revised Sheet No. 63
19 Revised Sheet No. 64

Effective November 1, 2005

22 Revised Sheet No. 54
21 Revised Sheet No. 63
20 Revised Sheet No. 64

Northern states that the revised tariff sheets are being filed in accordance with sections 53A and 53B of Northern's Tariff. Northern further states that this filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2005 and November 1, 2005, based on actual data for the applicable periods.

Northern further states that copies of the filing have been mailed to each of its 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2332 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 5, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to the Project License.

b. *Project No.:* 2105–095.

c. *Date Filed:* March 31, 2005.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Upper North Fork Feather River Project.

f. *Location:* The project is located on the North Fork Feather River in Plumas County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Randal Livingston, Senior Director, Power Generation, Pacific Gas and Electric Company, 245 Market, Room 1103 (N11E), P.O. Box 770000, San Francisco, CA 94177, (415) 973–6950.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Patricia W. Gillis at (202) 502–8735, or e-mail address: *patricia.gillis@ferc.gov.*

j. *Deadline for filing comments and or motions:* June 6, 2005.

k. *Description of Request:* Pacific Gas and Electric Company filed an amendment application that would change the project boundary by removing a 12.46-acre area of land located near the Upper North Fork Feather River Project's reservoir (Lake Almanor). Removal of this land, which consists of land within a residential development and an adjacent road, is not needed for project purposes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2314 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–229–031]

Panhandle Eastern Pipe Line Company, LP; Notice of Compliance Filing

May 4, 2005.

Take notice that on April 29, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on the filing, with an effective date of June 1, 2005.

Panhandle states that the filing is being made in compliance with the Commission's letter order dated May 31, 2000 in Docket No. RP91–229–029.

Panhandle states that copies of the filing were served on all affected customers, applicable state regulatory agencies and parties on the official service list in the above-captioned proceeding.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2333 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–292–000]

SCG Pipeline, Inc.; Notice of Proposed Change in FERC Gas Tariff

May 4, 2005.

Take notice that on April 28, 2005, SCG Pipeline, Inc. (SCG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective June 1, 2005:

First Revised Sheet No. 4 Superseding Original Sheet No. 4

SCG asserts that the purpose of its filing is to comply with section 154.106 of the Commission's regulations, which requires a tariff map showing the general geographic location of principal pipeline facilities and the general geographic location of points at which service is rendered. SCG states that the enclosed map specifically reflects the activation in 2004 of a meter station at the interconnection between SCG and South Carolina Pipeline Corporation in Jasper County, South Carolina.

SCG states that a copy of this filing has been served on its 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2328 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–325–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2005.

Take notice that on May 2, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective on June 1, 2005:

First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 17
First Revised Sheet No. 18

Texas Eastern states that the purpose of this filing is to update its system maps, in accordance with section 154.106 of the Commission's regulations, 18 CFR 154.106, reflecting Texas Eastern's principal pipeline facilities and the points at which service is rendered under the tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2355 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–156–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

May 6, 2005.

Take notice that on April 26, 2005, Texas Eastern Transmission, LP (Texas Eastern), filed in Docket No. CP05–156–000, an application pursuant to sections 157.205 and 157.208 of the Commission's Regulations, and Texas Eastern's blanket certificate authorization granted in Docket No. CP82–535–000, for authority to replace and relocate pipeline and related facilities at five locations in Fayette County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern has requested this authorization in order to accommodate ongoing construction as part of the Pennsylvania Turnpike Commission's (PTC) Mon-Fayette Expressway Project. Texas Eastern proposes to perform these activities under its blanket certificate issued in Docket No. CP82–535–000. Texas Eastern states that the estimated cost to replace and re-route the pipeline segments is $12,522,432. Texas Eastern will be reimbursed by the PTC for $12,433,282 and the remainder will be financed by Texas Eastern with funds on hand.

Any questions regarding the application should be directed to Steven E. Tillman, General Manager of Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–5113

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed, therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2371 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–317–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2005.

Take notice that on April 29, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 1, 2005.

Texas Gas states that the proposed changes would increase revenues from jurisdictional service by $58.3 million based on the 12-month period ending January 31, 2005, as adjusted and compared to the underlying rates.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2363 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–305–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2005.

Take notice that on April 29, 2005, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of June 1, 2005:

First Revised Sheet No. 152
First Revised Sheet No. 153

Transwestern states that it is filing the tariff changes in order to explain in further detail its procedures for solicitation of turnback capacity from existing firm shippers to minimize new facilities to be constructed.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2319 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–295–000]

Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2005.

Take notice that on April 29, 2005, Vector Pipeline L.P. (Vector), tendered for filing as part its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of June 1, 2005.

Vector states that the filing seeks to correct and amend provisions of the extant tariff, and make modifications to certain tariff language required to clarify meaning and intent. In addition, Vector states that it is proposing to eliminate certain discounting language.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2331 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–318–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 6, 2005.

Take notice that on May 2, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective May 2, 2005:

Fifteenth Revised Sheet No. 5
Eleventh Revised Sheet No. 6
Eleventh Revised Sheet No. 6A
Eleventh Revised Sheet No. 8
Thirteenth Revised Sheet No. 9
Ninth Revised Sheet No. 10
First Revised Sheet No. 11

Williston Basin states that the revised tariff sheets are being filed to update its system maps.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2364 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2156–003, et al.]

Cordova Energy Company, LLC, et al.; Electric Rate and Corporate Filings

May 5, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cordova Energy Company LLC

[Docket No. ER99–2156–003]

Take notice that on April 28, 2005, Cordova Energy Company LLC submitted an updated market power analysis.

Comment Date: 5 p.m. Eastern Time on May 19, 2005.

2. Walton Electric Membership Corporation

[Docket No. ER02–2001–000, ER01–1400–000]

Take notice that on July 6, 2004, Walton Electric Membership Corporation filed a Request for Waiver of Order No. 2001 Electric Quarterly Reports Requirements.

Comment Date: 5 p.m. Eastern Time on May 26, 2005.

3. Pacific Gas & Electric Company

[Docket No. ER03–198–002]

Take notice that on April 28, 2005, Pacific Gas & Electric Company (PG&E) submitted for filing a notification of change in status due to PG&E's recent execution (and receipt of regulatory approval) of energy procurement contracts with various counterparties. PG&E states that this transmittal will ensure compliance with the Commission's recently finalized reporting requirement, issued on February 10, 2005, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC, 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on May 19, 2005.

4. Virginia Electric and Power Company

[Docket No. ER04–1021–001]

Take notice that on April 28, 2005, Virginia Electric and Power Company, (Dominion Virginia Power) tendered for filing Eleventh Revised Service Agreement Nos. 253 and 49 under Virginia Electric and Power Company FERC Electric Tariff, Second Revised Volume No. 5, unexecuted agreements with Sempra Trading Corp. The April 28, 2005 filing amends Dominion Virginia Power's filing submitted on July 15, 2004 in Docket No. ER04–1021–000. Dominion Virginia Power requests an effective date of November 1, 2004.

Dominion Virginia Power states that copies of this filing were served upon Sempra Energy Trading Corp.

Comment Date: 5 p.m. Eastern Time on May 19, 2005.

5. Virginia Electric and Power Company

[Docket No. ER04–1023–001]

Take notice that on April 28, 2005, Virginia Electric and Power Company, (Dominion Virginia Power) tendered for filing Second Revised Service Agreement Nos. 379 and 380 under Virginia Electric and Power Company FERC Electric Tariff, Second Revised Volume No. 5, service agreements with Ingenco Wholesale Power LLC. The April 28, 2005 filing amends Dominion Virginia Power's filing submitted on July 15, 2004 in Docket No. ER04–1023–000. Dominion Virginia Power requests an effective date of November 1, 2004.

Dominion Virginia Power states that copies of this filing were served upon Ingenco Wholesale Power LLC.

Comment Date: 5 p.m. Eastern Time on May 19, 2005.

6. PSI Energy, Inc.

[Docket No. ER05–225–001]

Take notice that on April 29, 2005, PSI Energy, Inc. (PIS) submitted an errata to its November 17, 2004 submittal in Docket No. ER05–225–000 regarding a Stipulation and Agreement dated November 8, 2004 for an uncontested three-step increase in PSI's wholesale electric rates with Indiana Municipal Power Agency and other customers receiving wholesale electric service from PSI. PSI states that the purpose of the errata filing is to correct the header information on certain tariff sheets included in the November 17, 2004, filing in accordance with Order No. 614 and that no information on the previously filed tariff sheets has been revised. PSI indicates that the affected tariff sheets are for phases 2 and 3 of the three-step rate increase. PSI requests an effective date July 1, 2005 and January 1, 2006, respectively.

PSI states that the copies of the filing were served upon the affected customers and the Indiana Utility Regulatory Commission.

Comment Date: 5 p.m. Eastern Time on May 10, 2005.

7. Southwest Power Pool, Inc.

[Docket No. ER05–666–001]

Take notice that on April 28, 2005, Southwest Power Pool, Inc. (SPP) submitted a response to the Commission's April 21, 2005 deficiency letter regarding SPP's March 1, 2005 filing in Docket No. ER05–666–000. SPP requests severance of the liability components from its March 1, 2005 filing and approval of the other revisions to its regional Open Access Transmission Tariff. SPP requests an effective date of May 1, 2005.

Comment Date: 5 p.m. Eastern Time on May 19, 2005.

8. Carolina Power & Light Company, Florida Power Corporation

[Docket No. ER05–882–000]

Take notice that on April 29, 2005, Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC) submitted revised tariff sheets replacing the existing Transmission Loading Relief (TLR) procedures in CP&L's open-access transmission tariff, FERC Electric Tariff, Third Revised Vol. No. 3 and in FPC's open-access transmission tariff, FERC Electric Tariff, Second Revised Vol. No. 6 with the revised TLR procedures proposed by the North American Electric Reliability Counsel (NERC), and accepted by the Commission in *North American Electric Reliability Council,* 110 FERC ¶ 61,388 (2005). CP&L states requests an effective date of April 1, 2005.

CP&L states that copies of the filing were served upon the utilities' transmission customers and on the North Carolina Utilities Commission, the Public Service Commission of South Carolina, and the Florida Public Service Commission.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

9. Tampa Electric Company

[Docket No. ER05–884–000]

Take notice that on April 29, 2005, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated caps on energy charges for emergency assistance service under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi

Power Company, and Savannah Electric and Power Company, as represented by agent Southern Company Services, Inc. (collectively, Southern Companies). Tampa Electric requests an effective date of May 1, 2005.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

10. Tampa Electric Company

[Docket No. ER05–883–000]

Take notice that on April 29, 2005, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated transmission service rates under its agreements to provide qualifying facility transmission service for Cargill Fertilizer, Inc. (Cargill) and Auburndale Power Partners, Limited Partnership (Auburndale). Tampa requests an effective date of May 1, 2005.

Tampa Electric states that copies of the filing have been served on Cargill, Auburndale, and the Florida Public Service Commission.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

11. MidAmerican Energy Company

[Docket No. ER05–886–000]

Take notice that on April 29, 2005, the MidAmerican Energy Company (MidAmerican) submitted a filing to confirm that its open Access Transmission Tariff is in compliance with the North American Electric Reliability Council's most recent version of its Transmission Loading Relief procedures.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

12. MidAmerican Energy Company

[Docket No. ER05–901–000]

Take notice that on April 29, 2005, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated rates for emergency interchange service and scheduled/short-term firm interchange service under its interchange contract with each of 17 other utilities. Tampa Electric also tendered for filing revised sheets for inclusion in its open access transmission tariff (OATT) that contain an updated system average transmission loss percentage. Tamp Electric requests an effective date of May 1, 2005.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts and each customer under its OATT, as well as the Florida and Georgia Public Service Commissions.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

13. Virginia Electric and Power Company

[Docket No. ER05–902–000]

Take notice that on April 29, 2005, Virginia Electric and Power Company (VEPCO), tendered for filing Third Revised Rate Schedule FERC No. 132, an agreement with the Southeastern Power Administration (SEPA). VEPCO states that the revised sheets incorporate changes to reflect VEPCO's commencement of operations as a member of the PJM Interconnection, L.L.C. and make other changes to the arrangements between VEPCO and SEPA with respect to the use by certain of the VEPCO's wholesale customers of capacity and energy from SEPA's hydroelectric generating facilities. VEPCO requests an effective date of May 1, 2005.

VEPCO states that copies of the filing were served on SEPA and the Virginia State Corporation Commission.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

14. Consolidated Edison Energy Massachusetts

[Docket No. ER05–903–000]

Take notice that on April 29, 2005, Consolidated Edison Energy Massachusetts, Inc. (CEEMI) submitted for filing a Reliability Must Run Agreement between CEEMI, Consolidated Edison Energy, Inc., acting as Agent for CEEMI, and ISO New England Inc. (ISO–NE) for a 107 MW oil- and gas-fired steam electric operating unit located at a generation facility owned and operated by CEEMI in West Springfield, Massachusetts. CEEMI requests an effective date of May 1, 2005.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER05–904–000]

Take notice that on April 28, 2005, Alliant Energy Corporate Services, Inc., (AECS) on behalf of Wisconsin Power and Light Company (WPL), submitted for filing with the Commission a Master Power Supply Agreement (Supply Agreement) between Great Lakes Utilities (GLU) and WPL. AECS states that under the Supply Agreement, WPL agrees to furnish and sell, and GLU agrees to purchase all of the electricity required by the following GLU members for service to their retail customers and for the operation of their electrical equipment: Wisconsin Rapids-West; Wisconsin Rapids-East; and Kiel. AECS requests an effective date of April 1, 2005.

AECS states that a copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

16. Celerity Energy Partners San Diego LLC

[Docket No. ER05–905–000]

Take notice that on April 29, 2005, Celerity Energy Partners San Diego LLC (Celerity-SD) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its market-based tariff. Celerity-SD requests an effective date of May 31, 2005.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

17. Virginia Electric and Power Company

[Docket No. ER05–906–000]

Take notice that on April 29, 2005 Virginia Electric and Power Company, (VEPCO) tendered for filing a Notice of Cancellation and an Order No. 614 compliant canceled rate schedule sheet terminating the Interconnection and Operating Agreement between the VEPCO and Old Dominion Electric Cooperative (ODEC). VEPCO requests an effective date of May 1, 2005.

VEPCO states that copies of the filing were served upon ODEC.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

18. Western Electricity Coordinating Council

[Docket No. ER05–907–000]

Take notice that on April 29, 2005, the Western Electricity Coordinating Council (WECC) filed with the Commission a Fifth Amendment to the Reliability Criteria Agreement under the WECC's Reliability Management System. The WECC states that the Fifth Amendment makes the following modifications and additions to the criteria agreement: (1) incorporates changes to the qualified path unscheduled flow relief criterion approved by the WECC Board of Directors, and (2) corrects an incorrect section cross-reference. The WECC requests an effective date of May 1, 2005.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

19. El Paso Electric Company

[Docket No. ER05–908–000]

Take notice that El Paso Electric Company (EPE), on April 29, 2005, tendered for filing proposed changes in its Rate Schedule FERC No. 16 between EPE and Public Service Company of New Mexico (PNM). EPE requests an effective date of July 1, 2005.

EPE states that copies of the filing were served upon PNM.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

20. Black Hills Power, Inc.

[Docket No. ER05–909–000]

Take notice that on April 29, 2005, Black Hills Power, Inc. (Black Hills Power), as Joint Tariff Administrator of the Joint Open Access Transmission Tariff of Black Hills Power, Basin Electric Power Cooperative, and Powder River Energy Corporation Commission several long-term transmission service agreements under the Joint Tariff.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

21. California Power Exchange Corporation

[Docket No. ER05–910–000]

Take notice that on April 29, 2005, the California Power Exchange Corporation (CalPX) tendered for filing its rate schedule for Rate Period 7, the period from July 1, 2005 through December 31, 2005. CalPX states that it filed this rate schedule pursuant to the Commission's Orders of August 8, 2002 (100 FERC ¶ 61,178) in Docket No. ER02–2234–000, and April 1, 2003 (103 FERC ¶ 61,001) issued in Docket Nos. EC03–20–000 and EC03–20–001, which require CalPX to make a new rate filing every six months to recover current expenses. CalPX also states that the rate schedule therefore covers expenses projected for the period July 1, 2005 through December 31, 2005, and CalPX requests an effective date of July 1, 2005. CalPX also proposes a methodology to allocate CalPX's expenses for both Rate Period 7 and retroactively for Rate Periods 1 through 6, or alternatively, proposes that the Commission defer the determination of an allocation methodology and billing thereon until after a determination of who owes what to whom in the Refund Proceeding.

CalPX states that it has served copies of the filing on its participants, on the California ISO, the California Public Utilities Commission, and the California Electricity Oversight Board.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

22. Pacific Gas and Electric Company

[Docket No. ER05–911–000]

Take notice that on April 29, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing 5 Large facilities agreements and 15 small facilities agreements, submitted pursuant to the Procedures for Implementation of section 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City) (Procedures) that were approved by this Commission in FERC Docket No. ER99–2532–000 and recently updated in a negotiated Clarifying Supplement filed in the Parties' Settlement in FERC Docket No. ER04–215–000. PG&E's ninth quarterly filing submitted pursuant to section 4 of the procedures, which provides for the quarterly filing of facilities and the third filing of executed agreements pursuant to the clarifying supplement.

The quarterly filing process streamlines the procedures for filing numerous facilities, and facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific facilities required for firm transmission and distribution service requested by City under these facilities agreements.

PG&E states that copies of this filing have been e-served upon City, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

23. Calpine Construction Finance Company, L.P.

[Docket No. ER05–912–000]

Take notice that on April 29, 2005, Calpine Construction Finance Company, L.P. (CCFC) submitted for filing, pursuant to section 205 of the Federal Power Act (16 U.S.C. 824d), and part 35 of the Commission's regulations (18 CFR 35), a rate schedule for reactive power from the Sutter Energy Center. CCFC requests an effective date of June 1, 2005.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

24. PJM Interconnection, L.L.C.

[Docket No. ER05–913–000]

Take notice that on April 29, 2005, PJM Interconnection, L.L.C. (PJM) submitted for filing revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to incorporate language accepted by the Commission in prior versions of these documents, but not previously integrated into the current effective tariff sheets, and to correct minor typographical and formatting errors. PJM requests an effective date of May 1, 2005.

PJM states that copies of this filing have been served electronically on all PJM members and each state electric utility regulatory commission in the PJM region, and asks for any waivers necessary to allow such electronic service.

Comment Date: 5 p.m. Eastern Time on May 20, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2351 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7264–010–WI]

Fox Paper Company and N.E.W. Hydro, Inc.; Notice of Availability of Environmental Assessment

May 5, 2005.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a subsequent license for the Middle Appleton Dam Hydroelectric Project located on the Lower Fox River, in Outagamie County, Wisconsin, and has prepared an Environmental Assessment (EA). The EA analyzes the potential environmental effects of licensing the project and concludes that issuing a subsequent license for this project, with appropriate environmental measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact or *FERCOnlineSupport@ferc.gov* call toll-free at (866) 208–3676, or for TTY contact (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Middle Appleton Dam Hydroelectric Project No. 7264–010" on all comments. Comments may be filed electronically via Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact John Ramer at (202) 502–8969.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2316 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 5, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of license.

b. *Project No.:* 4914–012.

c. *Date Filed:* April 29, 2005.

d. *Applicants:* International Paper Company (Transferor) and Thilmany, LLC (Transferee).

e. *Name of Project:* De Pere Hydroelectric.

f. *Location of Project:* At the U.S. Army Corps of Engineers' De Pere Dam on the Fox River in Brown County, Wisconsin. The project does not occupy any United States lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contacts:* John F. Harrington and Glenn S. Benson, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 662–0200 (Transferor); William J. Madden, Jr., Winston & Strawn LLP, 1700 K Street, NW., Washington, DC 20006 (Transferee).

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and motions to intervene:* May 25, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–4914) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if any intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Application:* The Applicants jointly and severally seek Commission approval to transfer the license for the De Pere Hydroelectric Project from International Paper Company to Thilmany, LLC.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2315 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 4, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New water withdrawal from licensed project waters.

b. *Project No.:* 2232–487.

c. *Date Filed:* April 6, 2005.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* The Catawba-Wateree Project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, Division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions regarding this notice should be addressed to Blake Condo at (202) 502–8914.

j. Description of Request: Duke Power proposes to grant a new water withdraw easement to the Town of Mooresville, North Carolina for project property within Lake Norman. The easement will provide for the placement of new intake screens and new water intake pipes, allowing the Town of Mooresville to withdraw water using a new raw water intake pump station. The proposed water intake and pump station would be located adjacent to the existing raw water intake and existing pump station. Mooresville has requested that the new facility have an initial capacity of 12 million gallons per day (MGD). The water intake and pump facility will be located in Iredell County, North Carolina.

k. Deadline for filing comments or motions: June 6, 2005.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item "h" above.

m. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number (P–2232–457) to which the filing refers. All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

Anyone may submit responses in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any responses must be received on or before the specified comment date for the particular application.

n. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, that agency will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2334 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 6, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12571–000.

c. *Date Filed:* January 24, 2005.

d. *Applicant:* NatEl America Hydropower Company.

e. *Name and Location of Project:* The proposed Mississippi River L&D No. 25 Hydroelectric Project would be located in Lincoln County in Missouri and Calhoun County in Illinois and would use the U.S. Army Corps of Engineers Lock and Dam No. 25.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Daniel J. Schneider, NatEl America, 3298 FM 407, Justin, TX 76247, (817) 488–7436.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12571–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an

issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Proposed Project:* The proposed project would use the Corps Lock and Dam No. 25 and consist of: (1) Sixteen new powerhouses, each containing one 3.5 megawatt (MW) generating unit, for a total installed project capacity of 56 MW; (2) sixteen 60-foot-wide, 20-foot-deep, 70-foot-long penstocks; (3) a new 3-mile-long transmission line; and (4) appurtenant facilities. The proposed project would have an annual generation of 400,000 MWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2357 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

May 6, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12572–000.

c. *Date filed:* January 25, 2005, supplemented April 11, 2005.

d. *Applicant:* San Diego County Water Authority (Authority).

e. *Name of Project:* Rancho Penasquitos Pressure Control and Hydroelectric Facility (PCHF).

f. *Location:* The PCHF would be connected by high and low pressure pipelines to Pipeline 5 of the Second San Diego Aqueduct in San Diego County, California and would contain pressure control valves and the hydroelectric generating unit. The Authority receives water for the Second San Diego Aqueduct from the Metropolitan Water District of Southern California (MWD) at Lake Skinner in Riverside County, California. The MWD obtains water from both the State Water Project and the Colorado River Aqueduct water supply systems.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. David P. Chamberlain, San Diego County Water Authority, 4677 Overland Avenue, San Diego, CA 92123, (858) 522–6811.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by July 6, 2005. All reply comments must be filed with the Commission by July 21, 2005.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed small conduit hydroelectric project would occupy a 60-foot by 25-foot area of the PCHF building and would consist of: (1) A gated steel pipe connecting to the high pressure pipeline, (2) a horizontal Francis turbine and a 4.5-megawatt generating unit; and (3) a gated steel pipe connecting to the low pressure pipeline. The average annual energy production would be 31,500 megawatt hours. Power produced by the project would help meet peak energy demand in the San Diego area.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–12572, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2358 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494]

Grand River Dam Authority; Notice of Public Meeting

May 5, 2005.

The Commission hereby gives notice that members of its staff will conduct a public meeting on Tuesday, May 24, 2005, from 6:30 p.m. to 9 p.m (c.s.t.) in the fellowship hall of the First United Methodist Church located at 200 B Street, NW., Miami, Oklahoma. The purpose of the meeting is to familiarize the public with the Commission's regulatory role for the Pensacola Project (FERC No. 1494), and to receive comments from the public concerning management of the project's shoreline and related resources. Staff is particularly interested in comments related to marina development, dredging operations, public access, and resource protection. All interested members of the public are invited to participate.

Please contact *steven.naugle@ferc.gov* or (202) 502–6182 with any questions, or for additional information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2313 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–3–000]

Promoting Regional Transmission Planning and Expansion to Facilitate Fuel Diversity Including Expanded Uses of Coal-Fired Resources; Second Supplemental Notice of Technical Conference

May 5, 2005.

As announced in a Notice of Technical Conference issued on February 16, 2005 and a Supplemental Notice issued March 21, 2005, a technical conference will be held on Friday, May 13, 2005, to identify regional solutions to promoting regional transmission planning, expansion and enhancement to facilitate fuel diversity including increased integration of coal-fired resources to the transmission grid. The conference will be held at the Charleston Marriott Town Center, 200 Lee Street East, Charleston, West Virginia 25301. The conference is scheduled to begin at 8:30 a.m. (e.s.t.) and end at approximately 4:30 p.m. The Commissioners will attend and participate.

An agenda for this meeting is included as Attachment A. Although registration is not a strict requirement, in-person attendees are asked to register for the conference on-line by close of business on May 10, 2005 at *http://www.ferc.gov/whats-new/registration/coal-05-13-form.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–266–6646) for a fee. They will be available for the public on the Commission's eLibrary system and on the calendar page posting for this event seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–933–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

For additional information, please contact Sarah McKinley at 202–502–8004, *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–2323 Filed 5–11–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–60–B; DA 05–737]

Auction of Lower 700 MHz Band Licenses Scheduled for July 20, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of five licenses in the Lower 700 MHz Band. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 60 is scheduled for July 20, 2005.

FOR FURTHER INFORMATION CONTACT: *Auctions and Spectrum Access Division, WTB:* For legal questions: Howard Davenport at (202) 418–0660, for general auction questions: Ray Knowles or Lisa Stover at (717) 338–2888. *Media Contact:* Lauren Patrich at (202) 418–7944.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 60 Procedures Public Notice* released on March 22, 2005. The complete text of the *Auction No. 60 Procedures Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 60 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at their Web site: *http://www.BCPIWEB.com.* When ordering a document from BCPI, please provide the appropriate FCC document number for example DA 05–737 for a copy of this Public Notice. This document is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/60/.*

I. General Information

A. Introduction

1. The *Auction No. 60 Procedures Public Notice* announces the procedures and minimum opening bid amounts for the upcoming auction of licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled for July 20, 2005 (Auction No. 60). On January 26, 2005, in accordance with Section 309(j)(4) of the Communications Act of 1934, as amended, the Wireless Telecommunications Bureau ("Bureau") released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 60. The Bureau received no comments in response to the *Auction No. 60 Comment Public Notice,* 70 FR 6436, (February 7, 2005).

i. Background of Proceeding

2. On January 18, 2002, the Commission released the *Lower 700 MHz Report and Order,* 67 FR 45380 (July 9, 2002) which adopted allocation and service rules for the Lower 700 MHz Band. Specifically, the Commission reallocated the entire 48 megahertz of spectrum in the Lower 700 MHz band to fixed and mobile services and retained the existing broadcast allocation for both new broadcast services and incumbent broadcast services during their transition to digital television ("DTV"). The Commission established technical criteria designed to protect incumbent television operations in the band during the DTV transition period, allowed low power television ("LPTV") and TV translator stations to retain secondary status and operate in the band after the transition, and set forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58.

3. In its service rules, the Commission divided the Lower 700 MHz band into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission decided to divide the five blocks in the Lower 700 MHz band plan as follows: for the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum,

the Commission determined to assign licenses in six Economic Area Groupings ("EAGs"); for the remaining 12 megahertz block of paired spectrum, the Commission determined to assign licenses in 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). All operations in the Lower 700 MHz band are generally regulated under the framework of Part 27's technical, licensing, and operating rules. To permit both wireless services and certain new broadcast operations in the Lower 700 MHz band, however, the Commission has amended the maximum power limits in Part 27 to permit 50 kW effective radiated power ("ERP") transmissions in the Lower 700 MHz band, subject to certain conditions. Finally, the Commission established competitive bidding procedures and voluntary band-clearing mechanisms for the Lower 700 MHz band. On June 14, 2002, the Commission affirmed its decisions in the *Lower 700 MHz Report and Order*.

4. With respect to the MSA and RSA licenses, the Bureau notes that MSAs and RSAs are collectively known as Cellular Market Areas (CMAs). CMAs were created from the Metropolitan Statistical Areas ("MSAs") defined by the Office of Management and Budget (CMA001–CMA305), the Gulf of Mexico (CMA306), and Rural Service Areas ("RSAs") established by the FCC (CMA307–CMA734). These RSAs include parts of Puerto Rico not already in an MSA (CMA723–CMA729), U.S. Virgin Islands (CMA730–CMA731), Guam (CMA732), American Samoa (CMA733), and Northern Mariana Islands (CMA734). The CMA designation, rather than MSA/RSA, is used in the FCC Integrated Spectrum Auction System and in the Universal Licensing System.

ii. Licenses To Be Auctioned

5. Auction No. 60 will offer five CMA licenses in the Lower 700 MHz band C block (710–716/740–746 MHz). These licenses remained unsold in Auction No. 49, which closed on June 13, 2003. The C block is a 12-megahertz block consisting of a pair of 6-megahertz segments.

AUCTION NO. 60.—LOWER 700 MHZ BAND LICENSES TO BE AUCTIONED

Market number	Market name	License number	Block	Frequencies (MHz)	Bandwidth (MHz)
CMA169	Mayaguez, PR	WZ–CMA169–C	C	710–716, 740–746	12
CMA202	Arecibo, PR	WZ–CMA202–C	C	710–716, 740–746	12
CMA723	Puerto Rico 1—Rincon	WZ–CMA723–C	C	710–716, 740–746	12
CMA727	Puerto Rico 5—Ceiba	WZ–CMA727–C	C	710–716, 740–746	12
CMA729	Puerto Rico 7—Culebra	WZ–CMA729–C	C	710–716, 740–746	12

B. Rules and Disclaimers

i. Relevant Authority

6. Prospective applicants must familiarize themselves thoroughly with the Commission's rules, particularly those relating to the Lower 700 MHz band contained in Title 47, part 27, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in this Public Notice; the *Auction No. 60 Comment Public Notice*; and the Commission's decisions in proceedings regarding competitive bidding procedures.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC's Reference Information Center. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc.

ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. *This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.* For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting an application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

9. Applicants for licenses in any of the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the

initiation of an investigation when warranted.

10. The Commission's anti-collusion rule allows applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering any of the same geographic areas. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

11. Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c) (6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

12. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.

13. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule these documents are available on the Commission's anti-collusion web page.

iii. Interference Protection of Television Services

14. Among other licensing and technical rules, new Lower 700 MHz band licensees must comply with the interference protection requirements set forth in § 27.60 of the Commission's rules. Generally, § 27.60 establishes standards for protection of co- and adjacent-channel analog TV and DTV facilities. Thus, for example, a new licensee seeking to operate on the C block (710–716/740–746 MHz) portion of the Lower 700 MHz band must provide co-channel protection to nearby TV and DTV operations on Channels 54 and 59 and provide adjacent-channel protection to stations on Channels 53, 55, 58, and 60. New Lower 700 MHz band licensees should also be aware that incumbent broadcasters may be permitted to make certain changes to their authorized facilities. Such modified facilities may be entitled to interference protection from new Lower 700 MHz band licensees. In addition, Appendix D of the *Lower 700 MHz Report and Order* describes additional adjacent-channel interference considerations that are designed to mitigate the possibility of base-to-base interference that may arise at base receive stations that are in close proximity to high power transmitters operating on adjacent channels. Moreover, licensees intending to operate a facility at a power level of greater than 1 kilowatt must provide advance notice to the Commission and to licensees authorized in their area of operation. New Lower 700 MHz licensees also will have to comply with any additional technical requirements or interference protection requirements that may be adopted as a result of any future rulemaking proceedings.

15. Potential bidders should recognize that the interference protection requirements for the Lower 700 MHz band are more stringent in certain respects relative to the interference standards that apply to the Upper 700 MHz band. These interference obligations will remain in force until the end of the DTV transition period at which time analog TV and DTV broadcasters will be required to vacate both the Upper and Lower 700 MHz bands.

16. Potential bidders should be aware that a greater number of broadcast incumbents exist in the Lower 700 MHz band relative to the Upper 700 MHz band. The Commission has also observed that, although there is approximately the same number of analog incumbents in both the Upper and Lower 700 MHz bands, the Lower 700 MHz band consists of less spectrum and, therefore, incumbent licensees are more densely situated across the band. Further, there is a significantly greater number of DTV assignments on the eight television channels in the Lower 700 MHz band, including licenses, construction permits, pending applications, and pending allotment petitions, than exist in the Upper 700 MHz band. The Commission may also permit certain Channel 60–69 broadcasters to relocate temporarily into Channels 52–58 pursuant to a voluntary clearing arrangement.

17. Negotiations with Incumbent Broadcast Licensees: The Commission has established a policy of facilitating voluntary clearing of the 700 MHz bands to allow for the introduction of new wireless services and to promote the transition of incumbent analog television licensees to DTV service. Generally speaking, this policy provides that the Commission will consider specific regulatory requests needed to implement voluntary agreements between incumbent broadcasters and new licensees to clear the Lower 700 MHz band early, if consistent with the public interest. The fundamentals of the Commission's voluntary clearing policy for the 700 MHz bands were established in a series of decisions beginning with the adoption of the *Upper 700 MHz First Report and Order* in January 2000. However, in light of certain differences between the Upper and Lower 700 MHz bands, the Commission decided not to extend certain aspects of its voluntary clearing policy to the Lower 700 MHz band, including the presumptions that were established in the Upper 700 MHz band for analyzing voluntary band-clearing proposals and the extended DTV construction period that was provided to certain single-channel

broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz band. In considering such regulatory requests, the Commission will consider whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers or deploying wireless service to rural or other underserved communities. The Commission intends to weigh these benefits against any likely public interest costs, such as the loss of any of the four stations in the designated market area with the largest audience share, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service, or a negative effect on the pace of the DTV transition in the market.

18. Subsequent to the adoption by the Commission of its voluntary clearing policy, the Auction Reform Act of 2002 was enacted. One provision of this legislation restricts the Commission's authority to waive certain broadcast interference standards and the minimum spacing requirements for certain proposals to relocate Channel 52–69 analog operations to a Channel 2–51 DTV allotment, if such waiver "will result in any degradation in or loss of service, or an increased level of interference to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted."

19. Finally, the Commission notes that an existing or future wireless licensee in the 700 MHz bands may notify in writing a digital low power TV or TV translator operating on the same channel or first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the low power TV or translator station within its licensed geographic service area. Upon receipt of such notice, the digital LPTV or TV translator licensee must cease operation within 120 days unless it obtains the agreement of the wireless licensee to continue operations.

iv. Due Diligence

20. Applicants are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 710–716/740–746 MHz bands that will be subject to the upcoming auction. As discussed above in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 52, 53, 54, 55, 56, 57, 58, 59, and 60 must comply with the co-channel and the adjacent channel provision of § 27.60 of the Commission's rules. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas.

21. To aid applicants, this Public Notice lists incumbent licensees operating in these bands. The Commission makes no representations or guarantees that the matters listed are the only pending matters that could affect spectrum availability in these services. Applicants should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies.

INCUMBENT CDBS RECORD LISTING FOR DTV CHANNELS 53–55 AND 58–60 AS OF 3/10/05

Channel	State	City	Call sign	Facility ID	Name	ARN	Status	Service
53	PR	ARECIBO	WCCV–TV.	3001	ASOCIACION EVANGELISTICA CRISTO VIENE INC..	19991101AGR	CP	DT
54	PR	YAUCO	W54AQ	42151	ASOCIACION EVANGELISTICA CRISTO VIENE INC..	198904171Q	LIC	TX
54	PR	ARECIBO	WCCV–TV.	3001	ASOCIACION EVANGELISTICA CRISTO VIENE INC..	19950719KH	LIC	TV
55	PR	SAN JUAN	WIPR–TV.	53859	PUERTO RICO PUBLIC BROADCASTING CORP..	20000426ABF	CP	DT
58	PR	CAGUAS	WUJA	8156	CAGUAS EDUCATIONAL TV, INC..	19851107KE	LIC	TV
58	PR	MAYAGUEZ	W34CI	71730	WESTERN BROADCASTING CORP. OF PUERTO RICO.	JG0601UA	CP	TX
59	PR	BAYAMON	WDWL	4110	BAYAMON CHRISTIAN NETWORK.	20000419ABS	CP	DT
60	PR	SABANA GRANDE	W60AA	71726	WESTERN BROADCASTING CORP. OF PUERTO RICO.	1432	LIC	TX
60	PR	ARECIBO	WMEI	26676	HECTOR NEGRONI CARTAGENA.	19960415KE	CP MOD	TV
60	PR	ARECIBO	WMEI	26676	HECTOR NEGRONI CARTAGENA.	20001220ABS	APP	TV

22. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb/*. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application.

23. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418–2662, or via e-mail at *mbinfo@fcc.gov*. Applicants are solely responsible for identifying associated risks and for

investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 60.

24. Applicants should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 60. Applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

25. Applicant should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned. The Commission notes note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 60. In addition, although the Commission may continue to act on various pending applications, informal objections petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

26. As a convenience to potential applicants, the Bureau will issue shortly a due diligence announcement listing proceedings that may affect future operations in these bands. The Commission makes no representations or guarantees that the matters listed in this due diligence announcement are the only pending matters that could affect spectrum availability in these services.

v. Bidder Alerts

27. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

28. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 60 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 60 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act Requirements

29. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA"). The construction of a wireless antenna facility is a Federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains).

C. Auction Specifics

i. Auction Date

30. The auction will begin on Wednesday, July 20, 2005, as announced in the *Auction No. 60 Comment Public Notice,* 70 FR 6436 (February 7, 2005). The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day, and will continue until bidding has stopped on all licenses.

ii. Auction Title

31. Auction No. 60—Lower 700 MHz Band C block.

iii. Bidding Methodology

32. The bidding methodology for Auction No. 60 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC's Integrated Spectrum Auction system ("ISAS" or "FCC Auction System"), and telephonic bidding will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

ISAS Orientation Sessions	March 31, 2005 and April 21, 2005.
Auction Seminar	May 24, 2005.
Short-Form Application (FCC Form 175) Filing Window Opens	May 24, 2005; 12 p.m. ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	June 3, 2005; 6 p.m. ET.
Upfront Payments (via wire transfer)	June 30, 2005; 6 p.m. ET.
Mock Auction	July 18, 2005.
Auction Begins	July 20, 2005.

v. Requirements for Participation

33. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. Eastern Time (ET), June 3, 2005.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, June 30, 2005.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

GENERAL AUCTION INFORMATION:	
General Auction Questions	FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday.
Seminar Registration	

AUCTION LEGAL INFORMATION: Auction Rules, Policies, Regulations.	Auctions and Spectrum Access Division, (202) 418–0660.
LICENSING INFORMATION:	
Rules, Policies, Regulations	Mobility Division, (202) 418–0620.
Licensing Issues	
Due Diligence	
Incumbency Issues	
TECHNICAL SUPPORT:	
Electronic Filing	FCC Auctions Technical Support Hotline, (877) 480–3201, option nine or (202) 414–1250, (202) 414–1255 (TTY), Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday.
FCC Auction System	
PAYMENT INFORMATION:	
Wire Transfers	FCC Auctions Accounting Branch, (202) 418–0578, (202) 418–2843 (Fax).
Refunds	
TELEPHONIC BIDDING	Will be furnished only to qualified bidders.
FCC COPY CONTRACTOR: Additional Copies of Commission Documents.	Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, *http://www.bcpiweb.com.*
PRESS INFORMATION—FCC FORMS	Lauren Patrich (202) 418–7944, (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington area) *http://www.fcc.gov/formpage.html.*
FCC INTERNET SITES	*http://www.fcc.gov.*
	http://wireless.fcc.gov/auctions.
	http://wireless.fcc.gov/uls.

II. Short-Form (FCC Form 175) Filing Requirements

34. A party's application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, for Auction No. 60, if an applicant claims eligibility for a bidding credit, the information provided will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants to participate in Auction No. 60 must file FCC Form 175 electronically by 6 p.m. ET on June 3, 2005. Applicants bear full responsibility for submission of timely and complete FCC Form 175 applications. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions carefully and should consult the rules to ensure that, in addition to the materials described below; all the information that is required under the Commission's rules is included with their FCC Form 175 applications.

35. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple FCC Form 175s, such additional applications will be dismissed.

36. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Preferences for Small Businesses and Others

i. Size Standards for Bidding Credits

37. In the *Lower 700 MHz Report and Order*, the Commission determined that three levels of bidding credits were appropriate for the CMA licenses in the C block. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

38. For Auction No. 60, bidding credits will be available to small businesses, very small businesses, and entrepreneurs, or consortia thereof, as defined in § 27.702, for the Lower 700 MHz band licenses:

- A bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years ("entrepreneur") will receive a 35 percent discount on its winning bids.
- A bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bids.
- A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bids;

Bidding credits are not cumulative; a qualifying applicant receives the 35 percent, 25 percent, or 15 percent bidding credit on its winning bid, but only one credit per license.

39. Applicants should note that they will be required to provide information regarding revenues attributable to the applicant and related parties on their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as a small business, very small business, or entrepreneur (or consortia of a small business, very small business, or entrepreneur) for this auction.

ii. Tribal Lands Bidding Credit

40. The Commission notes that there are no federally recognized tribal lands within the geographic area covered by the licenses offered in this auction. Thus, tribal lands bidding credits will not be available to winning bidders in Auction No. 60.

iii. Installment Payments

41. Installment payment plans will not be available in Auction No. 60.

B. License Selection

42. In Auction No. 60, applicants must select the licenses on which they want to bid from the "Eligible Licenses" list. The applicant may select all the licenses in the list (by using the SELECT ALL option) or select and add individual licenses from the list. Be advised that there is no opportunity to change license selection after the short-form filing deadline. It is critically important that you confirm your license selection because the FCC Auction

System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

C. Consortia and Joint Bidding Arrangements

43. Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. Applicants will also be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants for any of the same geographic license areas after the deadline.

44. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Ownership Disclosure Requirements

45. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short form are set forth in § 1.2112 of the Commission's rules. To simplify filling out Form 175, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with Form 175, such as information submitted in an on-line Form 602, will automatically be entered into Form 175. Applicants are responsible for information submitted in Form 175 being complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing Form 175. Applicants can update any information that needs to be changed directly in the Form 175.

E. Bidding Credit Revenue Disclosures

46. Entities applying to bid as small businesses, very small businesses, or entrepreneurs (or consortia of small businesses, very small businesses, or entrepreneurs) will be required to disclose on their FCC Form 175 short-form applications the gross revenues for the preceding three years of each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. *Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years.* If the applicant is applying as a consortium of small businesses, very small businesses, or entrepreneurs, this information must be provided for each consortium member.

47. Controlling interest standard. The Commission uses a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission has modified its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission also clarified that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.

48. Control. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

49. A consortium of small businesses, very small businesses, or entrepreneurs is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy one of the definitions of small business, very small business, or entrepreneur in §§ 1.2110(f), 27.702. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

F. Provisions Regarding Former and Current Defaulters

50. Each applicant must indicate on its FCC Form 175 application under penalty of perjury whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, is not in default on any payment for Commission licenses (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

51. Former defaulters—*i.e.*, applicants, including their attributable interest holders, that in the past have

defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 60, provided that they are otherwise qualified. However, as discussed *infra* in § III.E.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

52. Current defaulters—*i.e.*, applicants, including their attributable interest holders, that are in default on any payment for Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency—are not eligible to bid in Auction No. 60.

53. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of our short-form application process. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an applicant's ability to comply with the default and delinquency disclosure requirements.

G. Other Information

54. Applicants owned by minorities or women, as defined in § 1.2110(c)(2), may identify themselves in filling out their FCC Form 175 short-form application regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

55. After the short-form filing deadline (6 p.m. ET June 3, 2005), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and addresses and phone numbers of the applicants and their contact persons. Applicants must press the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. In addition, applicants should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction60@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 60 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

56. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. ISAS Demonstrations

57. In connection with its announcement of the release of ISAS, the new auction application filing and bidding system, the Bureau is planning to conduct several ISAS orientation sessions in which the software will be demonstrated to the public. These sessions were held on March 31 and April 21, 2005, and are also available via webcast.

B. Auction Seminar—May 24, 2005

58. On Tuesday, May 24, 2005, the FCC will sponsor a seminar for parties interested in participating in Auction No. 60 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the Lower 700 MHz band service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

59. To register, complete the registration form and submit it by Friday, May 20, 2005. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

C. Short-Form Application (FCC Form 175)—Due June 3, 2005

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on June 3, 2005. *Late applications will not be accepted.* There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

60. Applications may generally be filed at any time beginning at noon ET on May 24, 2005, until 6 p.m. ET on June 3, 2005. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on June 3, 2005.

61. Applicants must always press the SUBMIT button on the *Certify & Submit* screen of the electronic form to successfully submit their FCC Form 175s or modifications. Any form that is not submitted will not be reviewed by the FCC. Technical support is available at (877) 480–3201 option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

D. Application Processing and Minor Corrections

62. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting such corrected applications.

63. As described more fully in the Commission's rules, after the June 3, 2005, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

E. Upfront Payments—Due June 30, 2005

64. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on June 30, 2005.

i. Making Auction Payments by Wire Transfer

65. Wire transfer payments must be received by 6 p.m. ET on June 30, 2005. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

66. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 60." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. FCC Form 159

67. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

68. In the *Part 1 Order*, 62 FR 13540, (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323, (August 29, 2000), the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules.

69. In the *Auction No. 60 Comment Public Notice*, the Commission proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

70. In the *Auction No. 60 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using a formula based on bandwidth and the license area population:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license.

The specific upfront payments and bidding units for each license are set forth in Attachment A of this Public Notice.

71. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. *Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.*

72. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the licenses applied for on its Form 175, the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

73. The Commission will use wire transfers for all Auction No. 60 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578.

F. Auction Registration

74. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

75. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175.

76. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, July

14, 2005, should contact the Auctions Hotline at (717) 338–2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

77. Qualified bidders should note that lost SecurID cards can be replaced only by appearing *in person* at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

G. Remote Electronic Bidding

78. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards, the telephonic bidding phone number, and the Integrated Spectrum Auctions System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 60.

79. Please note that the SecurID cards can be recycled and the Commission encourage bidders to return the cards to the FCC. The Commission will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

H. Mock Auction

80. All qualified bidders will be eligible to participate in a mock auction on Monday, July 18, 2005. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

81. The first round of bidding for Auction No. 60 will begin on Wednesday, July 20, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

82. In a simultaneous multiple round auction, all licenses are available during the entire auction, and bids are accepted on any license until the auction concludes. The Commission concludes that it is operationally feasible and appropriate to auction the Lower 700 MHz band licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Eligibility and Activity Rules

83. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Note again that each license is assigned a specific number of bidding units equal to the upfront payment on a bidding unit per dollar basis. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

84. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

85. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bid Amounts and Bid Increment Amounts" in Section IV.B.3). The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.3 and "Stage Transitions" in Section IV.A.4), the Commission adopts them for Auction No. 60.

iii. Auction Stages

86. In the *Auction No. 60 Comment Public Notice*, the Commission proposed to conduct the auction in two stages and employ an activity rule. The Commission further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Commission proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Commission received no comments on this proposal.

87. The Commission adopts its proposals for the activity rules and stages. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

88. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and

bids during the current round) by five-fourths (5/4).

89. *Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

Caution: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the bidding period of the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the FCC Auction System or by accessing the "Bidder Summaries" on the public results page.

iv. Stage Transitions

90. The auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

v. Activity Rule Waivers and Reducing Eligibility

91. Based upon its experience in previous auctions, the Commission adopts our proposal that each bidder be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (known as a "proactive waiver") or applied automatically by the FCC Auction System (known as an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. The Commission is satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

92. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

93. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Section IV.A.3). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

94. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. **Note:** Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

vi. Auction Stopping Rules

95. For Auction No. 60, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

96. The Bureau further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

97. In addition, the Bureau proposed that it reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

98. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

99. The Bureau adopts the above proposals. Auction No. 60 will begin under the simultaneous stopping rule approach, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 60, because its experience in prior auctions demonstrates that the auction stopping

rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

100. The Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

101. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

102. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

103. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

104. In the *Auction No. 60 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 60 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 60, the Bureau proposed the following license-by-license basis using a formula based on bandwidth and license area population:

$0.0075 * MHz * License Area Population with a minimum of $1,000 per license.

105. In the alternative, the Bureau sought comment on whether, consistent with the § 309(j), the public interest would be served by having no minimum opening bid or reserve price.

106. The Bureau adopts its proposal. The minimum opening bid amounts the Commission adopts for Auction No. 60 are reducible at the discretion of the Bureau. The Commission emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses.

107. The specific minimum opening bid amounts for each license available in Auction No. 60 are set forth in Attachment A of the *Auction No. 60 Procedures Public Notice*.

iii. Minimum Acceptable Bid Amounts and Bid Increment Amounts

108. In the *Auction No. 60 Comment Public Notice*, the Bureau proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*e.g.*, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount calculation is (provisionally winning bid amount) * (1 + 0.10), rounded or (provisionally winning bid amount) * (1.10), rounded. The Bureau will round the result using our standard rounding procedures. The Bureau further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if it determines that circumstances so dictate. The Bureau received no comment on this issue. The auction will begin with a minimum acceptable bid percentage of 10%.

109. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Auction System will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount.

110. The nine acceptable bid amounts for each license consist of the minimum acceptable bid amount and eight other bid amounts based on the bid increment percentage. The first additional acceptable bid amount, above the minimum acceptable bid amount, equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the bid increment percentage is 10 percent, then the next bid amount will equal (minimum acceptable bid amount) * 1.10, rounded, the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded, etc. The Bureau will begin the auction with a bid increment percentage of 10%. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

111. In the case of a license for which the provisionally winning bid amount has been withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid amount received for the license. The

additional bid amounts above the minimum acceptable bid amount are calculated using the bid increment percentage as described in the previous paragraph.

112. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System. The Bureau may also use its discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

iv. Provisionally Winning Bids

113. At the end of each bidding round, a provisionally winning bid amount will be determined based on the highest bid amount received for each license. A high bid from a previous round is referred to as a "provisionally winning bid." A "provisionally winning bid" will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that provisionally winning bids are counted as activity for purposes of the activity rule.

114. In the *Auction No. 60 Comment Public Notice*, the Bureau proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureau adopts its proposal. A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the license, unless that provisionally winning bid was withdrawn. If any bids are received on the license in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the license.

v. Bidding

115. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw provisionally winning bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

116. Please note that all bidding will take place remotely either through the FCC Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission). There will be no on-site bidding during Auction No. 60.

117. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) The licenses applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

118. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the password generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round *after* they have completed all of their activity for that round.

119. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

120. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a license, the FCC Auction System will calculate a minimum acceptable bid amount for that license for the following round, as described in Section IV.B.3.

121. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

122. In the *Auction No. 60 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at the bidder's discretion. The Commission received no comments on this issue.

123. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Commission adopts them for Auction No. 60.

124. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the "withdraw bids" function in the FCC Auction System (assuming that the bidder has not reached its withdrawal limit). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). **Note:** Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

125. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Commission continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, the Commission conclude that, for Auction No. 60, adoption of a limit on the use of withdrawals to one round per bidder is appropriate. By doing so the Commission believes the Commission strikes a reasonable compromise that will allow bidders to

use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block and 800 MHz SMR auctions, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

126. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to one round. The round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

127. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a "place holder" provisionally winning bidder on the license until a new bid is submitted on that license.

128. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

129. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

130. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 60 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

131. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

132. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must press the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction60@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 60 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

133. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

134. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 60 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business, very small business, or entrepreneur bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Section IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

135. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

136. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction No. 60. Winning bidders that are small businesses, very small businesses, or entrepreneurs must demonstrate their eligibility for small business, very small

business, or entrepreneur bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

D. Ownership Disclosure Information Report (FCC Form 602)

137. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. An ownership disclosure record was automatically created in the Universal Licensing System (ULS) for any applicant that submitted an FCC Form 175. However, winning bidders will be required to review and confirm that it is complete and accurate as of the date of filing Form 601. Further instructions will be provided to auction winning bidders at the close of the auction.

E. Default and Disqualification

138. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

F. Refund of Remaining Upfront Payment Balance

139. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 60 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

140. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Attn: Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

141. Bidders are encouraged to file their refund information electronically using the Refund Information icon in the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 05–9537 Filed 5–11–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Monday, May 16, 2005, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: The FDIC Insurance Funds: Outlook and Premium Rate Recommendations for the Second Semiannual Assessment Period of 2005.

Memorandum and resolution re: Interim Final Rule on Deposit Insurance Coverage of the Accounts of Qualified Tuition Programs Under Section 529 of the Internal Revenue Code.

Memorandum and resolution re: Interim Final Rule—Part 334 Medical Privacy Regulations under the Fair and Accurate Credit Transactions Act of 2003.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); or (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: May 9, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–9595 Filed 5–10–05; 12:52 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Monday, May 16, 2005, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, supervisory and personnel activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: May 9, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–9596 Filed 5–10–05; 12:52 pm]

BILLING CODE 6714–01–M

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 June 6, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. First Brandon Financial Corporation, Brandon, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of First Brandon National Bank, Brandon, Vermont.

Board of Governors of the Federal Reserve System, May 6, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–9442 Filed 5–11–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Workshop: Marketing, Self-Regulation & Childhood Obesity

AGENCIES: Federal Trade Commission (FTC or Commission); Department of Health and Human Services (HHS).

ACTION: Joint notice announcing public workshop and requesting public comment and participation.

SUMMARY: The FTC and HHS are planning to host a public workshop, "Marketing, Self-Regulation & Childhood Obesity," to explore self-regulatory marketing initiatives in the food and beverage industry that respond to concerns about childhood obesity.

The event is open to the public and there is no fee for attendance. For admittance to the conference center, all attendees will be required to show a valid form of photo identification, such as a driver's license.

The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please e-mail your name and affiliation to the e-mail box for the workshop, at *FoodMarketingtoKids@ftc.gov*. When you pre-register, we collect your name, affiliation, and your e-mail address. This information will be used to estimate how many people will attend and better understand the likely audience for the workshop. We may use your e-mail address to contact you with information about the workshop. Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at *http://www.ftc.gov/ftc/privacy.htm*. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

Additional information about the workshop will be posted on the FTC's Web site at *http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.htm*.

DATES: The workshop will be held on July 14 and 15, 2005 at the Federal Trade Commission's Satellite Building Conference Center located at 601 New Jersey Avenue, NW., Washington, DC. Comments and requests to participate as a panelist in the workshop must be received on or before Thursday, June 9, 2005.

Requests to Participate as a Panelist: Persons filing requests to participate as a panelist will be notified on or before Thursday, June 23, 2005, if they have been selected. For further instructions, please see the "Requests to Participate as a Panelist in the Workshop" section below.

Written and Electronic Comments: Any person may submit written or electronic comments on the topics to be discussed by the panelists. Such comments must be received on or before Thursday, June 9, 2005. For further instructions on submitting comments, please see the **ADDRESSES** section below. To read our policy on how we handle the information you submit, please visit *http://www.ftc.gov/ftc/privacy.htm*.

ADDRESSES: Comments and requests to participate as a panelist in the workshop should refer to "Food Marketing to Kids Workshop—Comment [or Request to Participate], Project No. P034519" to facilitate the organization of comments and requests to participate. A comment or request to participate filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/ Office of the Secretary, Room 159–H (Annex H), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments and requests to participate containing confidential material, however, must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-foodmarketingtokids* and following the instructions on the Web-based form. To

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftc-foodmarketingtokids* Web link. You may also visit *http://www.regulations.gov* to read this request for public comment and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, 202 326–3304 or Michelle Rusk, 202 326–3148, FTC, Bureau of Consumer Protection. The FTC staff contacts can be reached by mail at: Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580. Jennifer Bishop, 202 690–8384, HHS, Office of the Assistant Secretary for Planning and Evaluation. The HHS staff contact can be reached by mail at: The U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Room 447–D, Washington, DC 20201.

A detailed agenda and additional information on the workshop will be posted by Thursday, June 23, 2005 on the FTC's Web site at *http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.htm*.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

Background: Recently increasing attention has been given to the importance of a balanced and nutritious diet and physical activity in childhood to ensure healthy growth and development and prevent chronic conditions and disease. Obesity in children has become one of the top public health issues in the United States. According to the Centers for Disease Control and Prevention, over the last three decades, rates of obesity have more than doubled for children ages 2 to 5 years and for adolescents 12 to 19 years and have tripled for children ages 6 to 11 years. Approximately nine million children over age 6 are considered obese.[2] With increasing obesity rates, the incidence of type 2 diabetes and other long-term health problems is also rising.

Both within government and the private sector, multiple efforts are being taken or proposed to find and implement effective measures to reverse the childhood obesity trend. These include a wide variety of approaches, including identifying and funding additional research on childhood obesity, considering changes to food and beverage labeling, encouraging physical activity, and educating parents and children about the importance of physical activity and eating a balanced, nutritious diet. One frequent area of attention is the role of food and beverage advertising and other marketing directed to children.

Last fall, the Institute of Medicine issued a report of findings by the Committee on Prevention of Obesity in Children and Youth.[3] The report included many recommendations for action by industry, government, schools, and parents. Among them was a recommendation that the Department of Health and Human Services ("HHS") convene a national conference to assist the development of industry self-regulatory guidelines for marketing and advertising to children to help minimize the risk of obesity. The IOM also recommended that the FTC monitor compliance with those guidelines.

In the United States, industry members have adopted their own set of guidelines to encourage responsible advertising, including food advertising, to children. These guidelines, administered by the Council of Better Business Bureau's Children's Advertising Review Unit (CARU), were established in 1974 by the National Advertising Review Council (NARC) to promote responsible children's advertising.[4]

In June 2004, NARC published a white paper detailing CARU's ongoing self-regulatory efforts and synthesizing the specific principles, guidelines, and decisions related to food advertising to children. Information about CARU's self-regulatory program, including the guidelines and white paper, is available on the CARU Web site at *http://www.caru.org*.

In recent years, many individual companies in the food, beverage, and restaurant industries, and in the media and entertainment industries, have also taken actions to advance responsible food and beverage marketing to children and promote healthy lifestyles. These actions include reformulating food and beverage products to improve their nutritional profile, introducing new products, modifying portion sizes and packaging, providing additional nutrition and health information in labeling and advertising, establishing nutritional thresholds for products marketed to children, establishing criteria for marketing techniques that are appropriate for children, and sponsoring educational campaigns and programs that promote healthy food choices and physical activity.

Consumer groups have made proposals for expanded self-regulatory activities. For example, in January 2005, the Center for Science in the Public Interest (CSPI)[5] proposed an expanded set of "Guidelines for Responsible Food Marketing to Children," which calls for further voluntary reforms linked to specific nutritional thresholds. Additional information about CSPI's proposal is available on the CSPI Web site at *http://www.cspinet.org*.

In light of the widespread public interest in marketing of food and beverages to children, the FTC and HHS will hold a workshop on July 14–15, 2005 in Washington, DC to provide a forum for discussion of ongoing

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[2] Overweight and obesity are classified according to a measurement called the Body Mass Index (BMI). Among children and youth, obesity is defined by the IOM as those who have a BMI at or above the 95th percentile of the gender- and age-specific BMI charts developed by the Centers for Disease Control and Prevention (CDC) in 2000. The term overweight is used by the CDC and others to refer to children and youth who meet the same criteria. In most children, such BMI values indicate levels of body fat associated with the presence or risk of related chronic diseases.

[3] Institute of Medicine. 2005. *Preventing Childhood Obesity: Health in the Balance*, The National Academy Press (hereinafter "IOM Report").

[4] CARU's "Self-Regulatory Guidelines for Children's Advertising" include basic principles for responsible advertising directed to children under 12, as well as principles that relate to specific advertising techniques, such as advertising that involves endorsement and promotion by program or editorial characters. A number of the principles also directly affect how foods and beverages are marketed to children.

CARU reviews and evaluates child-directed advertising in all media and seeks voluntary changes by the advertiser when it finds advertising that is misleading, inaccurate, or otherwise inconsistent with its guidelines. CARU's decisions and the advertiser's response are published in the National Advertising Division (NAD)/CARU Case Report. The Council of Better Business Bureaus administers this program with funds from members of the children's advertising industry.

[5] CSPI is a consumer advocacy organization whose stated missions are to conduct innovative research and advocacy programs in health and nutrition, and to provide consumers with current, useful information about their health and well-being.

industry self-regulatory efforts that seek to address the marketing of food and beverages to children.[6]

At the workshop, participants will discuss industry members' efforts to address concerns about marketing to children, and CARU's efforts to encourage responsible industry advertising. It will also provide a forum to hear from consumer advocacy and public health groups concerning current industry practices.

To help in planning for the workshop, the FTC and HHS invite comment on the issues and topics set out below.

1. Food and Beverage Marketing to Children: Including the types of foods and beverages marketed to children; how "children's shows" are usually defined by marketers, advertisers, and self-regulatory and regulatory groups; the media (*e.g.*, broadcast and cable television, radio, print, the Internet), themes (*e.g.*, taste, fun, nutrition), and techniques (*e.g.*, licensing, product placements, packaging) used in such marketing; whether the type and technique used in marketing varies based on the age of the children who are targeted by marketers; the age groups usually targeted by marketers advertising to children (*i.e.*, is it usually children aged 2–5, 6–11, and 12 & over, or some other age group); the amounts spent on such marketing; the extent of children's exposure to such marketing; and how each of the above has changed over time.

2. Research on Impact of Marketing on Child Health: Including any correlation over time between food and beverage marketing and children's obesity rates, across U.S. regions, and internationally; the extent to which any link is explained by the marketing, the sedentary nature of TV watching, unobserved family characteristics, or other factors; changes in children's food consumption patterns over the past three decades; and whether increased caloric intake can be attributed to the consumption of more heavily marketed foods.

3. Existing Industry-Wide Self-Regulatory Programs: Including CARU's self-regulatory program; the scope of its guidelines (*e.g.*, the media and types of marketing covered, the principles encompassed, the age threshold); its effectiveness (*e.g.*, the extent of monitoring and enforcement, the degree of industry compliance); consumer and industry awareness; and the scope and impact of other self-regulatory programs in the U.S. or abroad that relate to food or beverage marketing to children.

4. Individual Company Self-Regulatory Efforts & Best Marketing Practices: including the efforts of food and beverage companies to foster healthier food choices by children and their parents through marketing policies (*e.g.*, nutritional criteria, restrictions on media placement, marketing themes, techniques), product modifications (*e.g.*, nutritional profile, portion size, packaging information), and other means; competition among food and beverage companies to market healthier food choices to children and their parents; the efforts of media and entertainment companies to foster healthier food choices by children and their parents through policies regarding the placement and content of food and beverage advertising, the licensing and cross-promotion of movie, television or electronic game programs or characters in food and beverage marketing, and the placement of food and beverage products in children's programming; and how the actions or policies of government or other stakeholders have created barriers or incentives to industry efforts to foster healthier food choices for children.

5. Education: including the effectiveness of efforts by industry members, media or entertainment companies, government, public advocacy groups, and others to educate children and their parents about the nutritional content of food and beverage products and the importance of good nutrition and a healthy lifestyle (including industry member "seal" programs like "Smart Spot" and "Sensible Solutions").

6. Plans/Proposals for New Initiatives: including the pros and cons of adopting one or more of the approaches suggested by CSPI or others; any practical experience in implementing such approaches; possible roles for industry, the media or third-party self regulatory groups like CARU in implementing such proposals; whether self-regulatory initiatives should vary based on the age of children who are targeted by marketers; additional research that might advance our understanding of the impact, if any, of food and beverage marketing on childhood obesity; and other issues that should be addressed at the workshop.

[6] The workshop will focus on food and beverage marketing to children. It is not intended to cover other possible contributors to childhood obesity, including sedentary behaviors like watching television, playing electronic games on a computer, or decreases in exercise, or the marketing of related sedentary entertainment products.

Requests To Participate as a Panelist in the Workshop

Parties seeking to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before Thursday, June 9, 2005. Requests to participate as a panelist should be submitted electronically by e-mail to *FoodMarketingtoKids@ftc.gov* or, if mailed, should be submitted in the manner detailed in the **ADDRESSES** section above, and should be captioned "Food Marketing to Kids Workshop—Request to Participate, Project No. P034519." Parties are asked to include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will focus and their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted. Panelists will be notified on or before Thursday, June 23, 2005, if they have been selected.

Using the following criteria, FTC/HHS staff will select a limited number of panelists to participate in the workshop:

1. The party has expertise in or knowledge of the issues that are the focus of the workshop.

2. The party's participation would promote a balance of interests being represented at the workshop.

3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s).

In addition, there will be time during the workshop for those not serving as panelists to ask questions.

Form and Availability of Comments

The FTC/HHS request that interested parties submit written comments on the above questions and other related issues to foster greater understanding of these topics. Especially useful are any studies, surveys, research, and empirical data. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before Thursday, June 9, 2005.

Dated: May 9, 2005.

Donald S. Clark,

Secretary, Federal Trade Commission.

Dated: May 9, 2005.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 05–9576 Filed 5–11–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Feasibility and Impact of Influenza Vaccination by Pediatricians of Household Contacts of Children Less Than Two Years

Announcement Type: New.

Funding Opportunity Number: RFA IP05–097.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: June 13, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 317(k)(1) of the Public Health Service Act, 42 U.S.C. 247b(k)(1), as amended.

Background: Influenza is associated with the hospitalization of approximately two out of every 1,000 children aged less than two years old each year on average. Influenza hospitalization rates up to five times higher have been reported among children aged zero to five months as compared with those 6–23 months. Beginning with the 2004–2005 influenza season, influenza vaccination was fully recommended for children aged 6–23 months and for household contacts and out-of-home caregivers of children aged less than two years. Since children aged less than six months cannot be vaccinated against influenza and because of incomplete protection from influenza among vaccinated children aged 6–23 months, vaccination of contacts is an important means to protect children less than two years old from influenza. Currently, no systems have been developed to reach household contacts of these young children. Evaluation of mechanisms to vaccinate household contacts of children aged less than two years, and particularly contacts of children aged less than six months, and an assessment of the impact on influenza in children with household contact vaccination are needed. Information about the relative benefit of household contact vaccination of children less than two years is particularly important when facing influenza vaccine shortage as occurred in 2004–2005 and is expected to occur at least in the early stages of a pandemic.

Although a multi-pronged approach will likely be necessary to maximize vaccination of household contacts and out-of-home caregivers of young children, one source for household contact vaccination may be pediatricians who see young children on a regular basis for newborn check-ups and routine immunizations. Pediatricians could offer influenza vaccine to household contacts as well, at the same or subsequent visits. Vaccination of adults and older children in the household at the same visit as the child aged less than two years would offer convenience and limit missed opportunities to vaccinate these contacts.

We propose a study to assess the feasibility and impact of influenza vaccination for household contacts of children less than two years of age.

Purpose: The purpose of the program is to:

1. Evaluate the feasibility of offering influenza vaccination to household contacts of children less than two years of age by pediatricians.

2. Evaluate the impact of influenza vaccine coverage among household contacts on influenza illness in children less than six months and 6–23 months of age.

This program addresses the "Healthy People 2010" focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Immunization Program (NIP): Reduce the number of indigenous cases of vaccine-preventable diseases (VPD).

Research Objectives: 1. To evaluate the feasibility of offering influenza vaccination to adult and pediatric household contacts of children less than two years of age by pediatricians.

2. To evaluate the impact of influenza vaccine coverage among household contacts on influenza illness in children less than six months and 6–23 months of age in comparison to vaccination of the child alone after controlling for important co-factors (*e.g.*, day care attendance, maternal influenza vaccination, household smoke exposure).

Activities: Awardee activities for this program are as follows:

1. Conduct a prospective case-control study among children and families enrolled in a group of pediatric practices in one or more geographic locations. Practices would be randomized to offering influenza vaccination to adult and pediatric household contacts of children less than two years of age at the pediatrician's office during or after the child's medical visit and educating the child's parent about the recommendation for vaccination of all of the child's household contacts versus education alone. For the intervention practices, evening vaccination clinics and walk-in influenza vaccination-only services for household contacts would also be provided. Influenza vaccine would be offered initially beginning on September 1, or as soon as vaccine is available for those children who would need two doses the first year and would begin October 1 for children who need only one dose. Vaccination efforts would continue through December 31. Educational materials including the Vaccine Information Statement should be provided to pediatric offices and staff and parents/guardians regarding the new recommendation and the rationale for the study.

2. During the time that influenza is circulating in the community (based on local virologic surveillance), a sample of children aged less than two years who come for medical care to intervention and non-intervention pediatric offices with fever and one or more acute respiratory symptoms or febrile seizure (ARI) will have the influenza vaccination histories of the child, parents and other household members collected plus other demographic information, such as daycare attendance and household smoke exposure. In addition, a respiratory specimen will be collected for rapid influenza testing. Influenza testing is essential since children in this age group experience an average of six respiratory illnesses a year and even during peak influenza activity, only 20–35 percent of respiratory illnesses would be expected to be influenza related.

3. During the same period, parents of children who come for medical care to the clinic without respiratory illness (controls) will be asked to complete a questionnaire on vaccination status of the child and household contacts and other demographic information. Controls should be recruited 2:1 with ill case children during the same week as ill children and matched by age within plus or minus one month of age for children less than six months, plus or minus two months for children aged 6–12 months, and plus or minus four months for children aged 13–23 months.

4. An audit of a sample of charts of children 6–23 months should be reviewed to assess the overall vaccination rate among children 6–23 months in the practice and to validate vaccination for a sample of children enrolled in the study.

5. A survey of a sample of families should be conducted at the end of the year to assess vaccination rates of household contacts of children less than six months and 6–23 months.

6. Physicians and nursing and administrative staff in the participating practices should be interviewed using a standard data collection instrument to assess logistical issues and difficulties anticipated or encountered both before and during implementation of the protocol to vaccinate the household contacts.

7. Because the severity and timing of influenza activity and the influenza vaccine antigenic match can vary substantially from year to year, the study should be conducted and data collected from two complete influenza seasons.

8. Analysis should include assessment of:

a. Vaccination rates of children and their household contacts compared between non-ARI controls, patients with ARI who test positive for influenza and patients with ARI who test negative for influenza.

b. Rates of laboratory-confirmed, medically-attended influenza illness among patients aged less than two years should be calculated among the participating practices after weighting based on the number of days and percentage of patients with ARI that are sampled.

c. The following influenza vaccine effectiveness estimates should be calculated: (1) Effectiveness in preventing influenza among children 6 to 23 months through vaccination of children in this age group, and (2) effectiveness in preventing influenza among household contacts of children less then six months and 6 to 23 months through vaccination of children in these two age groups.

d. Vaccination rates of ARI and non-ARI controls household contacts between those practices with and without adult vaccination services should be compared to assess the success of the contact vaccination program.

e. Sample sizes needed for analysis must be included.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide CDC investigators to monitor the cooperative agreement as protocol investigators and project officer(s).

2. Provide consultation, scientific, and technical assistance in designing and conducting the project. Assist in the development of Institutional Review Boards (IRB) approval review by all cooperating institutions and CDC.

3. Participate in data analysis and interpretation, and co-authoring of manuscripts.

4. Participate in publication and dissemination of findings.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: R01.

Fiscal Year Funds: 2005 for Year One.

Approximate Total Funding: $302,250 for Year One (This amount is an estimate, includes direct and indirect costs, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $302,250 Year One and $300,750 Year Two (These amounts include direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $302,250 (This ceiling is for the first 12-month budget period and include direct and indirect costs.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 Months.

Project Period Length: 2 Years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are encouraged to apply.

Additional Principal Investigator qualifications are as follows:

- Previous demonstration of ability to conduct and publish peer-reviewed epidemiologic studies on vaccine preventable diseases.
- Submission of letters of support.
- Be able to initiate the study the first year of funding and have complete data for two influenza seasons.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the modular budgeting as well as non-modular budgeting formats. See:.*http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 13, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404–371–5277. If you still have a question concerning your application, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction
- Real estate lease or purchase
- Vehicle purchase
- Vehicle lease or rental
- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed. Awarded funds may not be used for any of the above restrictions with the exception of vehicle rental directly associated with travel necessary to accomplish the requirements of the project and for incidental expenses associated with travel to meetings directly relating to the project.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail or delivery service to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—RFA IP05–097, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Capability Demonstration: The application will be evaluated based on response to all lettered and numbered items listed under Activities, and demonstration of capability of conducting these activities.

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative methods to address these problems? The application will also be evaluated based on: Appropriateness of power and sample size estimates; methodology for assessing influenza vaccine effectiveness by vaccinating household contacts in preventing illness in children 0–5 months and 6–23 months.

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? The extent to which the applicant's plan describes the organizational structure and procedures and identifies all participating persons and groups including identifying key professional staff and their roles and responsibilities. Past experience of key professional staff in conducting clinical pediatric epidemiologic research in vaccine preventable diseases, including past experience in epidemiological assessment of vaccine effectiveness. Previous demonstration of ability to conduct and publish peer-reviewed epidemiologic studies on vaccine preventable diseases. Submission of letters of support.

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed activities take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Past experience working in pediatric outpatient clinics and with pediatric providers in conducting clinical research on vaccines.

Support from non-applicant supporting agencies, institutions, organizations, laboratories, consultants, etc., indicated in applications operational plan. Do not include letters of support from CDC personnel.

Clear definition of the populations that would be studied, including geographic description and population sizes and socio-economic and racial-ethnic makeup.

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- A clear understanding of the background and objectives of this cooperative agreement program.
- A clear understanding of the requirements, responsibilities, constraints, and complexities that may be encountered in establishing and conducting the study.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Center for Scientific Review (CSR), and for responsiveness by OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the

initial merit review, all applications will:

- Undergo a peer review by a Special Emphasis Panel. The SEP will be selected from the NIH pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities
- Proposed budget

V.3. Anticipated Announcement and Award Dates

Anticipated Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) quarterly during the project. The progress report sent no later than 90 days before the end of the first half of the budget period will serve as your non-competing continuation application, and must contain the following additional elements:
   a. Reports of participant enrollment.
   b. Progress in analysis.
   c. Progress Toward Measures of Effectiveness.
   d. Additional Information Requested by Program.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, MS E–05, 1600 Clifton Road, Atlanta, GA 30333, Telephone: 404 639–8727, E-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Mattie Jackson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2696, E-mail: *mij3@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements." *http://www.cdc.gov/nip* and *http://www.cdc.gov/flu.*

Dated: May 6, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9453 Filed 5–11–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Influenza Vaccination of Children and Accompanying Adults: Mass Vaccination vs Vaccination in Routine Care

Announcement Type: New.

Funding Opportunity Number: RFA IP05–094.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 13, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.

Background: Epidemics of influenza have been responsible for an average of approximately 36,000 deaths/year in the United States during 1990–1999. Influenza viruses also can cause pandemics, during which rates of illness and death from influenza-related complications can increase worldwide. Influenza viruses cause disease among all age groups. Rates of infection are highest among children, but rates of serious illness and death are highest among persons aged greater than or equal to 65 years and persons of any age who have medical conditions that place them at increased risk for complications from influenza.

Influenza vaccination is the primary method for preventing the disease and its severe complications. In 2004, the Advisory Committee on Immunization Practices (ACIP) recommended that healthy children aged 6–23 months be vaccinated against influenza because they are at increased risk for influenza-related hospitalization. In addition, vaccination is recommended for their household contacts and out-of-home caregivers. Vaccination is also recommended for contacts of children aged zero to five months because influenza vaccines have not been approved by FDA for use among children aged greater than six months.

Purpose: The purpose of the program is to fund research to conduct an incremental economic evaluation of vaccination of healthy children aged 6–23 months, and the adults who accompany them, in mass vaccination clinic settings compared with vaccination at routine health care visits. The new ACIP recommendations may affect the capacity of the pediatric health care infrastructure to provide vaccination services. We want to know whether mass clinics are an economically and financially viable alternative to providing influenza vaccination during routine visits. This question must be answered from the societal perspective, but the perspective of the pediatric health care provider is also important because that is the level at which implementation would likely occur.

Mass vaccination clinics could include scheduled or walk-in visits for influenza vaccination conducted in a variety of ways. For example, influenza vaccination can be offered on specified days each week during flu season, during a specified time period in a certain month, in schools or other specialty clinics, and could incorporate the offering of vaccine to adults who accompany children to be vaccinated. Applicants are encouraged to estimate costs under the widest variety of possible conditions.

This program addresses the "Healthy People 2010" focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objectives:

- To estimate the societal- and provider-perspective incremental cost-effectiveness of influenza vaccination of healthy children aged 6–23 months and, if possible, adults who accompany them in mass vaccination clinic settings compared with vaccination at routine health care visits.
- To estimate the opportunity costs associated with mass vaccination clinics.
- To assess the effect of practice type, including pediatric and family medicine, solo and multiple physician/multiple specialty settings, on cost-effectiveness.
- To assess the acceptability of mass vaccination clinics to providers and parents of patients compared with vaccination in routine scheduled visits.

Activities: Awardee activities for this program are as follows:

- Identify or develop theoretical and empirical models for analyzing the incremental cost-effectiveness of vaccination of healthy children aged 6–23 months, and if possible the adults who accompany them, in (1) mass vaccination clinic settings and (2) at private routine health care facilities.
- Identify appropriate theoretical and empirical models for assessing the acceptability of mass vaccination clinics to providers and parents of patients.
- Develop a study design suitable for data collection and analysis.
- Categorize the resources required to provide influenza vaccination in the two settings, including resources reallocated by the use of mass vaccination clinics.
- Determine sites, methods, and feasibility of protocol prior to implementation.
- Identify key staff and established resources/expertise available to develop study models.
- Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

- Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).
- Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.
- Provide technical assistance on the selection and evaluation of data collection and data collection instruments.
- Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.
- Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, health economics, and survey research consultation.
- Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.
- Serve as liaisons between the recipients of the project award and other administrative units within the CDC.
- Facilitate meetings between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: $150,000. (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 1.

Approximate Average Award: $150,000. (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: $150,000. (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.)

- Public nonprofit organizations
- Private nonprofit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges

- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301)435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt1.htm.*

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 13, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be

notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404–371–5277. If you still have a question concerning your application, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail or delivery service to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72. telephone: 404–371–5277. Fax: 404–371–5215. e-mail: *MLerchen@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to:

Technical Information Management—RFA IP05–094, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72. telephone: 404–371–5277. Fax: 404–371–5215. e-mail: *MLerchen@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field? How likely are the findings to be generalizable and applicable to other settings in which mass vaccination clinics would be considered as an alternative to vaccination during routine health care visits?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods, *i.e.* model building? Are the aims original and innovative? To the extent necessary, does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Does the investigator have a history of conducting economic and systems research? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- The applicant must demonstrate the ability to access both mass and routine clinic settings by providing letters of intent to collaborate with the applicant on behalf of clinics.
- Ability to effectively implement a large community or hospital system-based influenza vaccination program. The applicant must demonstrate the ability to conduct economic analyses in public health, including but not limited to expertise in incremental cost-effectiveness analysis as evidenced by a record of publication in peer-reviewed journals
- Ability to conduct time studies and system evaluations, as evidenced by a record of publication in peer-reviewed journals. Such studies may include but not be limited to assessing health care system performance, productivity, and capacity.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of

women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a Special Emphasis Panel. The SEP will be selected from the NIH pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7 Executive Order 12372
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, National Immunization Program, MS E–05, 1600 Clifton Road NE, . Atlanta, GA 30333. Telephone: 404–639–8727. E-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72. Telephone: 404–371–5277. Fax: 404–371–5215. E-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Mattie Jackson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2696. E-mail: *mij3@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 6, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9451 Filed 5–11–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Influenza Vaccination of Healthcare Workers in Hospitals

Announcement Type: New.
Funding Opportunity Number: RFA IP05–089.
Catalog of Federal Domestic Assistance Number: 93.185.
Letter of Intent Deadline: June 13, 2005.
Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317 (k)(1) [42 U.S.C. 247b (k)(1)] of the Public Health Service Act, as amended.

Background: Healthcare workers have been included in the Annual Advisory Committee for Immunization Practices recommendations for over 20 years. Influenza vaccination coverage remains low, under 40 percent in the 2002 National Health Interview Survey. The rationale for including healthcare workers has been that healthcare workers can serve as vectors of influenza virus. Another rationale for promoting vaccination of healthcare workers is that health care workers who themselves are vaccinated may be better advocates of influenza vaccination. Multifaceted approaches which include several components, such as convenience of vaccination (*e.g.* mobile carts, peer vaccination), free vaccine, education, and outreach appear to be the most effective (1–3).

1. Habib S, Rishpon S, Rubin L. "Influenza vaccination among healthcare workers". "Isr Med Assoc J. 2000"; 2:899–901.

2. Nichol KL, Hauge M. "Influenza vaccination of healthcare workers". "Infect Control Hosp Epidemiol 1997"; 18(3):189–194.

3. Bryant KA, Stover B, Cain L, Siegel J, Jarvis W. "Improving influenza immunization rates among healthcare workers caring for high risk pediatric patients". "Infect Control Hosp Epidemiol" (in press)

Purpose: The purpose of the program is to fund research to identify effective, feasible, and sustainable methods to increase influenza vaccination of health care workers in hospital settings, with the potential for widespread dissemination. This program addresses the "Healthy People 2010" focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Centers for Disease Control and Prevention's (CDC), National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objective:

- To develop, implement and evaluate an intervention to increase influenza vaccination of hospital-based health care workers.

Activities: Awardee activities for this program are as follows:

- Develop an intervention to increase influenza vaccination rates among health care workers in hospitals. Important characteristics of the intervention include sustainability and degree to which the intervention could be implemented widely with limited resources. In addition, the intervention developed should reflect current knowledge about effectiveness of interventions to increase vaccination, specifically the importance of systems and administrative changes.
- Identify a minimum of five hospitals that will implement this intervention. Hospitals included should represent a mix of public and private hospitals, and include at least two hospitals with more than 300 beds.
- Develop a study design suitable for evaluating the effectiveness of this intervention. A control group of hospitals should be included to ensure that changes are not attributable to secular trends.
- Identify key staff and established resources/expertise available to develop, implement and evaluate intervention.
- Implement intervention in the selected hospitals. Collect information on barriers to program implementation, including healthcare worker attitudes.
- Evaluate the cost of the intervention with distinction between fixed and variable costs.
- Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).
- Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.
- Provide technical assistance on the selection and evaluation of data collection and data collection instruments.
- Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.
- Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.
- Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.
- Serve as liaisons between the recipients of the project award and other administrative units within the CDC.
- Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.
Mechanism of Support: U01.
Fiscal Year Funds: 2005.
Approximate Total Funding: $ 150,000 (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)
Approximate Number of Awards: One.
Approximate Average Award: $150,000 (Includes direct and indirect costs. This amount is for the first 12-month budget period.)
Floor of Award Range: None.
Ceiling of Award Range: $150,000 (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)
Anticipated Award Date: August 31, 2005.
Budget Period Length: 12 months.
Project Period Length: 2 years.
Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317 (k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.)

- Public nonprofit organizations
- Private nonprofit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

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IV. Application and Submission Information

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If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

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problem, CDC will consider the submission as having been received by the deadline.

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LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

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Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Preference will be given to applicants with a demonstrated relationship with targeted hospitals as evidenced by letters of support and/or previous demonstrated successful collaboration. Documentation should be placed in an appendix.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include

the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and the OPHR for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a Special Emphasis Panel. The SEP will be selected from the NIH pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail from the Scientific Review Administrator, NIP.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7 Executive Order 12372
- AR–9 Paperwork Reduction Act
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, 1600 Clifton Road NE, National Immunization Program, MS E–05, Atlanta, GA 30333, Telephone: 404 639–8727, E-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, Telephone: 404–371–5277, Fax: 404–371–5215, E-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Sharron Orum, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2716, E-mail: *SPO2@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 6, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9455 Filed 5–11–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Improving Vaccination Coverage in the Greater Than 65 Years of Age Population

Announcement Type: New.

Funding Opportunity Number: RFA IP05–091.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline (LOI): June 13, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.

Background

Despite national and state efforts, influenza vaccination coverage among adults age 65 and older has not increased in the last 5 years. One possible explanation for low vaccination coverage, on both national and state levels, is that previous efforts have not sufficiently targeted older adults whose access to traditional primary care providers is limited and who are willing to accept influenza vaccine but may not seek it out.

Recent research has shown that high volume emergency departments (EDs) are excellent sites to identify and vaccinate such patients because:

(1) The number of visits to emergency rooms is large, with over 100 million visits each year in the United States and visits in the elderly population approaching 100 visits per 100 persons age 65 and older;

(2) Much of the work of assessing and vaccinating can be done at low cost by paramedical personnel and;

(3) Vaccination of hospital inpatients and outpatients in EDs has been recommended and is a cost effective approach to immunize people who have not been vaccinated in traditional primary care settings.

Studies have also shown that offering vaccines, at no charge to clients, dramatically improves acceptance of vaccine. This finding should be taken into account when developing ED-based strategies.

However, acceptance of these strategies has been limited, in part, because resources and motivation to initiate and sustain the system-wide changes have been lacking. The impact of large, hospital-based vaccination on vaccine coverage in a population of Medicare beneficiaries has not been demonstrated.

Purpose

The purpose of the program is to develop large scale community-wide programs to provide influenza vaccination in emergency departments for older adults who are unable or not motivated to seek vaccination services in traditional medical settings. This program addresses the "Healthy People 2010" focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objectives

- Implement practical and inexpensive strategies to increase immunization coverage among patients seeking care in emergency departments.
- Increase community wide vaccination levels in people age 65 and older a minimum of 5 percent based on the number of previously unvaccinated people immunized during the intervention.
- Develop a training manual that can be used in other emergency departments.

Activities

Awardee activities for this program are as follows:

- By the end of 2005, approach all hospitals serving in a single Metropolitan Statistical Area (MSA) or Hospital System with a population age 65 and older between 50,000 and 150,000. While each hospital can develop its own approach, the program will ideally target all people over 65 in target groups for influenza vaccine who seek care in EDs, outpatient clinics, or both.
- In each hospital ED, offer influenza vaccine to all patients age 65 or over and optionally to all other target groups.
- Those reluctant to be vaccinated will be counseled and again offered vaccination.
- Hospitals that agree to participate should order sufficient vaccine to vaccinate 50 percent of the Medicare patients that they expect to be seen in EDs or as inpatients between October 1, 2005 and January 31, 2006. Efficient billing of Medicare or private insurance should be an integral part of the program. State or local health departments, or donors, may subsidize vaccination of uninsured patients and others whom the hospital does not receive reimbursement for if the expense of doing so is not otherwise covered by program generated income.
- Costs per person to implement the intervention should be collected.
- The patients should be provided with documentation of the vaccination to be forwarded to his/her primary care provider.
- A training manual should be developed so that other EDs can adapt and implement the vaccination strategy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Work closely with grantee to assure that interventions and approaches previously shown to be effective in EDs are incorporated into the project.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: $100,000 (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $100,000 (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: $100,000 (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.)

- Public nonprofit organizations
- Private nonprofit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations

• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

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Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

1. Identification of target hospital system or MSA that fulfills selection criteria.
2. Evidence that local public health and or medical institutions are willing to participate.
3. Ability to effectively implement a large community or hospital system-based influenza vaccination program.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by the OPHR.

Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Under go a peer review by a Special Emphasis Panel. The SEP will be selected from the NIH pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score,

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7 Executive Order 12372
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, National Immunization Program, Centers for Disease Control and Prevention, MS E–05, 1600 Clifton Road NE., Atlanta, GA 30333, telephone: 404–639–8727, e-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, telephone: 404–371–5277, Fax: 404–371–5215, e-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Peaches Brown, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2738, e-mail: *POBrown@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 6, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–9456 Filed 5–11–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Effectiveness of a Hospital-Based Program for Vaccination of Birth Mothers and Household Contacts With Inactivated Influenza Vaccine

Announcement Type: New.

Funding Opportunity Number: RFA IP05–095.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 13, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.

Background

Influenza is a common respiratory infection among young children with a prevalence of 20 percent seasonally

(Neuzil KM, Shy Y *et al.* "Burden of interpandemic influenza in children younger than five years: a 25-year prospective survey". "Journal of Infectious Diseases 2002"; 185:147–52). Children under 23 months of age, especially those with underlying respiratory or cardiac conditions or those who are immunocompromised (Neuzil KM, Wright PF *et al.* "Journal of Pediatrics" 2000; 137(6):856–64.), are at increased risk for complications. In October of 2003, the Advisory Committee on Immunization Practices (ACIP) recommended that all children aged six to 23 months should be immunized with inactivated influenza vaccine beginning with the 2004–2005 influenza season. For those children immunized, this will mean protection from this potentially serious disease. However, children from birth though five months of age are still vulnerable, since this age group is not recommended for vaccination Vaccination of household contacts, especially the mother, is the best strategy for protecting these children.

Purpose: The purpose of the program is to fund research that will promote the implementation of the ACIP's recommendation to vaccinate household contacts of persons in groups at high risk of influenza related complications with inactivated influenza vaccine. This project is specifically targeted to vaccinate post-partum mothers and other household contacts in order to protect newborn children who are at increased risk of influenza-related hospitalizations and deaths if infected with this disease. This is a two year project with year one for planning and development and the second year for implementation and evaluation activities.

This program addresses the "Healthy People 2010" focus area(s) of immunization and infectious disease.

Measurable outcomes of the program will be in alignment with the performance goal for the Center for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objectives

- Evaluate the effectiveness of a hospital-based program for vaccinating birth mothers in the immediate post-partum period with inactivated influenza vaccine during influenza season.
- Identify appropriate strategies to assist NIP in implementing programs to improve vaccination rates of birth mothers with inactivated influenza vaccine in hospital settings.
- Develop strategies to vaccinate other household contacts as soon as possible after the birth of the newborn.

Activities

Awardee activities for this program are as follows:

1. Select two birthing hospitals with at least 1,500 deliveries per year. Randomly assign one to serve as the intervention hospital and the other as the control. The hospitals should be similar in terms of demographics of the population served and number of deliveries per year.
2. Implement a strategy for ensuring administration of inactivated influenza vaccine to all birth mothers before hospital discharge. This may include strategies such as standing orders for vaccination, provider reminders though flagging charts, etc.
3. Select a sample size large enough to have 80 percent power to determine if the vaccination rate for the birth mothers is higher in the intervention group than in the control group at an alpha significance level of 0.05. Since the unit of the randomization is the hospital, between-cluster variation may exist and analytic strategies to account for this should be included in the study design.
4. Implement strategies to vaccinate other household contacts of the newborn. This may occur at the birthing hospital or at alternate sites but vaccination should occur as soon as possible after the birth.
5. Develop a study design that will include input from hospital administrative and nursing staff as well as obstetricians who admit patients to the study hospitals to optimize success of the project.
6. Collect information on demographic data of the participants to be analyzed as predictors for immunization.
7. Document areas where difficulties/barriers arose and how they were resolved. This will include implementation activities at the facility level as well as a descriptive summary of vaccine acceptance or non-acceptance by study participants.
8. Obtain rates of uptake of vaccine by study participants by a review of medical records and/or other verification methods.
9. Collaboratively disseminate research findings in peer reviewed publications and presentations at national professional meetings.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).
2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.
3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.
4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.
5. Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.
6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.
7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.
8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: $200,000. (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 1.

Approximate Average Award: $200,000. (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: $200,000. (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.)

- Public nonprofit organizations.
- Private nonprofit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2.
- Font size: 12-point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, e-mail address, telephone number, and FAX number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact Grants Info. Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

Preference will be given to applicants with a demonstrated relationship with two birthing hospitals with at least 1,500 deliveries per year as evidenced by letters of support and/or previous demonstrated successful collaboration. Place this documentation behind the first page of your application form.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt1.htm.*

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 13, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI and

application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404–371–5277. If you still have a question concerning your application, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, telephone: 404–371–5277, Fax: 404–371–5215, e-mail: *MLerchen@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—RFA IP05–095, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, telephone: 404–371–5277, Fax: 404–371–5215, e-mail: *MLerchen@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score: Preference will be given to applicants with a demonstrated relationship with two birthing hospitals with at least 1,500 deliveries per year as evidenced by letters of support and/or previous demonstrated successful collaboration.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45, Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the

proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Preference will be given to applicants with a demonstrated relationship with two birthing hospitals with at least 1,500 deliveries per year as evidenced by letters of support and/or previous demonstrated successful collaboration. Place this documentation behind the first page of your application form.

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- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a Special Emphasis Panel (SEP). The SEP will be selected from the National Institutes of Health (NIH) pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

Anticipated Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–7 Executive Order 12372.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–15 Proof of Non-Profit Status.
- AR–22 Research Integrity.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

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For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, National Immunization Program, MS E–05, 1600 Clifton Road NE, Atlanta, GA 30333, telephone: 404–639–8727, e-mail: *SChu@cdc.gov.*

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D–72, telephone: 404–371–5277, Fax: 404–371–5215, e-mail: *MLerchen@cdc.gov.*

For financial, grants management, or budget assistance, contact: Yolanda Ingram-Sledge, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–2787, e-mail: *YSledge@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 6, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control.

[FR Doc. 05–9457 Filed 5–11–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Community Services Block Grant Training and Technical Assistance Program: Special State Technical Assistance

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–OCS–EZ–0026.

CFDA Number: 93.569.

Due Date for Applications: Application is due June 27, 2005.

Executive Summary: The Office of Community Services (OCS) within the Administration for Children and Families (ACF) announces that competing applications will be accepted for a new grant pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training and Educational Services (COATES) Human Services Reauthorization Act of 1998 (Pub. L. 105–285).

The proposed grant program, the Special State Technical Assistance Program,will fund 12 to 15 State CSBG Lead Agenciesand/or State Community Action Associations to develop and support interventions in cases where an eligible entity is in a crisis situation.

I. Funding Opportunity Description

Under sections 674(b)(2)(B) and 678A, funds may be used by the Secretary to assist States in carrying out corrective action activities of the CSBG and monitoring to correct programmatic deficiencies of eligible entities. States are required to determine whether eligible entities meet the performance goals, administrative standards, financial management obligations and other requirements of the State. The CSBG legislation mandates that States offer to eligible entities training and technical assistance (T&TA), as appropriate, prior to any termination procedures. It also requires States to carry out corrective activities and to monitor all eligible entities at least every three years.

The CSBG Act requires States to conduct regular, on-site reviews of eligible entities. When a State determines that an eligible entity has a deficiency that must be corrected, the CSBG legislation mandates that the State offer an eligible entity T&TA, if appropriate, to help correct such a deficiency. A State may support this T&TA with the CSBG funds remaining after it has made grants to eligible entities. However, OCS recognizes that, in some instances, the problem to be addressed may be of such a complex or pervasive nature that it cannot be adequately addressed with the resources available to the State CSBG Administrator.

In addition to the standard procedures outlined above, H.R. Rep. 108–636 (September 7, 2004) makes the following recommendation:"The Committee further encourages Training and Technical Assistance funding appropriated for fiscal year 2005 to be used for activities to carry out corrective action and monitoring activities (including the development of reporting systems and electronic data systems) to assist States in continuing to improve their local programs."

Definitions of Terms

The following definitions apply:

Community Action Agency (CAA)—refers to local-level organizations that are Community Services Block Grant (CSBG) Eligible Entities (Section 673(1)A))—the term "eligible entity" means an entity that is an eligible entity described in Section 673(1)(a) of the CSBG Act. They provide a number of types of assistance with the goals of reducing poverty and enabling low-income families to become economically self-sufficient.

Community Services Network—refers to the various organizations involved in planning and implementing programs funded through the CSBG or providing training, technical assistance or support to them. The network includes local CAAs and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations that collaborate and participate with CAAs and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement—an award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project. Substantial involvement may include collaboration or participation by OCS staff in activities specified in the award and, as appropriate, decision-making at specified milestones related to performance. The involvement may range from joint conduct of a project to OCS approval prior to the recipient's undertaking the next phase in a project.

Eligible Entities—(Section 673(1)(A))—an eligible entity as described in section 673(1)(A) of the CSBG Act (as in effect on the day before the date of enactment of the COATES Human Services Reauthorization Act of 1998) or is designated by the process described in section 676A (including an organization serving migrant or seasonal farmworkers that is so described or designated) and has a tripartite board (Section 676B of the CSBG Act) or other mechanism described in the CSBG Act.

Special Note: Under the Act, CAAs are eligible entities; however not all eligible entities are CAAs. Throughout this announcement, the reference is to organizations defined in section 673(1)(A) of the CSBG Act whenever CAAs are mentioned.

Nationwide—refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the CAAs and other local service providers who administer CSBG funds.

Non-profit Organization—refers to an organization, including faith-based or community-based, which meets the requirement for proof of non-profit status in the "Additional Information on Eligibility" section of this announcement and has demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Outcome Measures—are indicators that focus on the direct results one wants to have on customers and on communities.

Performance Measurement—is a tool used to assess how a program is accomplishing its mission through the delivery of products, services and activities.

Results-Oriented Management and Accountability (ROMA) System—ROMA is a system that provides a framework for focusing on results for local agencies funded by the CSBG Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State—means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Except

where specifically noted, for purposes of this program announcement, it also includes Territories as defined below.

Technical assistance—is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories—refers to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Training—is an educational activity or event that is designed to impart knowledge, understanding or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Program Purpose, Scope and Focus

The purpose of this program priority area is to improve the capacity of States in carrying out corrective action activities and monitoring to correct programmatic deficiencies of eligible entities. The grant will support interventions in cases where an eligible entity is in a crisis situation. It will preclude the need for termination hearings and proceedings by stabilizing eligible entities in crises and correcting programmatic deficiencies, if possible.

Program Statutes

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their sub-tier contractors and/or sub-grantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their sub-tier contractors or sub-grantee will pay with profits or non-appropriated funds on or after December 22, 1989, and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. Required Certification and Disclosure forms to be submitted with your application are attached.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States and local government by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant certifies that s/he will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all sub-grantees shall certify accordingly.

Priority Area 1

Special State Technical Assistance Program

1. Description: The purpose of this program priority area is to improve the capacity of States in carrying out corrective action activities and monitoring to correct programmatic deficiencies of eligible entities. The grant will support interventions in cases where a CSBG eligible entity is in a crisis situation. It will preclude the need for termination hearings and proceedings by stabilizing eligible entities in crises and correcting programmatic deficiencies, if possible.

The Office of Community Services (OCS) within the Administration for Children and Families (ACF) announces that competing applications will be accepted for a new grant pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training and Educational Services (COATES) Human Services Reauthorization Act of 1998, (Pub. L. 105–285). The proposed grant program, the Special State Technical Assistance Program, will fund 12 to 15 State CSBG Lead Agencies and/or State Community Action Associations to develop and support interventions in cases where an eligible entity is in a crisis situation.

Under sections 674(b)(2)(B) and 678A, funds may be used by the Secretary to assist States in carrying out corrective action activities of the CSBG and monitoring to correct programmatic deficiencies of eligible entities. States are required to determine whether eligible entities meet the performance goals, administrative standards, financial management obligations and other requirements of the State. The CSBG legislation mandates that States offer to eligible entities training and technical assistance (T&TA), if appropriate, prior to any termination procedures. It also requires States to carry out corrective activities and to monitor all eligible entities at least every three years.

The CSBG Act requires States to conduct regular, on-site reviews of eligible entities. When a State determines that an eligible entity has a deficiency that must be corrected, the CSBG legislation mandates that the State offer an eligible entity training and technical assistance (T&TA), if appropriate, to help correct such a deficiency. A State may support this T&TA with the CSBG funds remaining after it has made grants to eligible entities. However, OCS recognizes that, in some instances, the problem to be addressed may be of such a complex or pervasive nature that it cannot be adequately addressed with the resources available to the State CSBG Administrator.

In addition to the standard procedures outlined above, the H.R. Rep. 108–636 (September 7, 2004) makes the following recommendation:"The Committee further encourages Training and Technical Assistance funding appropriated for fiscal year 2005 to be used for activities to carry out corrective action and monitoring activities (including the development of reporting systems and electronic data systems) to assist States in continuing to improve their local programs."

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $500,000.

Anticipated Number of Awards: 12 to 15.

Ceiling on Amount of Individual Awards per Project Period: $50,000.

Floor on Amount of Individual Awards Per Project Period: $10,000.

Average Projected Award Amount Per Project Period: $33,000.

Length of Project Periods: 12 month project and budget period.

Note: The Fiscal Year 2006 President's Budget does not include or propose funding for the CSBG program.

III. Eligibility Information

1. Eligible Applicants

Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education. Non-profits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Others (see Additional Information on Eligibility below).

Additional Information on Eligibility: Community Services Block Grant eligible entities, State Community Action Associations, for-profit organizations, non-profit organizations having 501(c)(3) status, and non-profit organizations that do not have 501(c)(3) status. Faith-based organizations are eligible to apply.

As prescribed by the Community Services Block Grant Act (Pub. L. 105–285, section 678A(c)(2)), eligible applicants are eligible entities or statewide or local organizations, or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

2. Cost Sharing/Matching

None.

3. Other

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 Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net 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.

When applying electronically we strongly suggest you attach your proof of non-profit status with your electronic application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "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.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be eligible for funding under this announcement.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

IV. Application and Submission Information

1. Address to Request Application Package

Dr. Margaret Washnitzer, Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209. Phone: 800–281–9519. E-mail: *OCSGRANTS@acf.hhs.gov.*

2. Content and Form of Application Submission

Each application must include the following components:

Table of Contents:

a. Abstract of the Proposed Project—very brief, not to exceed 250 words that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

b. Completed Standard Form 424—that has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

c. Standard Form 424A—Budget Information-Non-Construction Programs.

d. Narrative Budget Justification—for each object class category required under section B, Standard Form 424A.

Project Narrative—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

Application Format: Submit application materials on white 8½ × 11 inch paper only. Do not use colored, oversized or folded materials. Please do not include organizational brochures or other promotional materials, slides, films, clips, etc. The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides. Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one. Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation: The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 65 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

Required Standard Forms: Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with

the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Additional requirements: The application must contain a signed Standard Form 424 Application for Federal Assistance "SF–424", a Standard Form 424–A Budget Information "SF–424A" and signed Standard Form 424B Assurance—Non-Construction Programs "SF–424B" completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

1. The application must include a project narrative that meets requirements set forth in this announcement.

2. The application must contain documentation of the applicant's tax-exempt status as indicated in the "Funding Opportunity Description" section of this announcement.

Project summary abstract: Provide a one page (or less) summary of the project description with reference to the funding request.

Full project description requirements: Describe the project clearly in 30 pages or less (not counting supplemental documentation, letters of support or agreements) using the following outline and guidelines. Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 30 typed pages starting on page one of "Objectives and Need of Assistance". The description must be doubled-spaced, printed on only one side, with at least ½ inch margins. Pages over the limit will be removed from the competition and will not be reviewed.

The maximum number of pages for supplemental documentation is 10 pages. The supplemental documentation, subject to the 10-page limit, must be numbered and might include brief resumes, position descriptions, proof of non-profit status (if applicable), news clippings, press releases, etc.

Supplemental documentation over the 10-page limit will not be reviewed. Applicants must include letters of support or agreement, if appropriate or applicable, in reference to the project description. Letters of support are not counted as part of the 30-page project description limit or the 10-page supplemental documentation limit.

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. ACF will not accept grant applications via email or facsimile transmission.

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.
- We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use Grants.gov, 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.

An original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations 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: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under *Section V* Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within

Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

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 date for submission of applications is referenced above in the *Due Date for Applications* field. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review referenced in *Section IV.6.*

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in *Section IV.6.*, between Monday and Friday (excluding Federal holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. Applicants will receive an electronic acknowledgement for applications that are submitted via Grants.gov.

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.

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. Determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Project Description	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Budget Narrative/Justification.	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
SF424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Assurances	See Section IV.2	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Table of Contents	See Section IV.2	Found in Section IV.2	By application due date.
SF424A	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Support Letters	See Section IV.2		By application due date.
Project Narrative	See Section IV	Found in Section IV	By application due date.

Additional Forms: 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.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	Found in *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

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 that have 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.

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Each application may include only one proposed project.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. Please see *Section IV.3* for an explanation of due dates. Applications should be mailed to: Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services (OCS) Operations Center, Attention: Barbara Ziegler Johnson, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services (OCS) Operations Center, Attention: Barbara Ziegler Johnson, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209.

Electronic Submission: http://www.Grants.gov. Please see *Section IV.2* for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 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.

1. Criteria

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "full project description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Part I—The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly

pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Explain how the project will assist the CSBG eligible entity in correcting programmatic deficiencies and stabilizing program operations.

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.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

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.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

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.

Evaluation Criteria: The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*i.e.*, from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach 30 Points

Factors: The work program is results-oriented and appropriately related to the CSBG legislative mandate. The extent to which the applicant describes how it will involve the local CAA Board of Directors and other partners in the community in its activities. The extent to which the applicant addresses:

specific outcomes to be achieved; performance targets which the project is committed to achieving; critical milestones, which must be achieved if results are to be gained; and organizational support; the level of support including the priority this project has for the agency.

Objectives and Need for Assistance 25 Points

Factors: The applicant documents that the project addresses vital needs related to the purposes stated and discussed under this announcement.

Results or Benefits Expected 20 Points

Factor: The extent to which the applicant adequately describes how the project will assure long-term program and management improvements that will aid in removal from the "at risk category."

Organizational Profiles 20 Points

Factors: The applicant fully describes, for example in a resume, the experience and skills of the proposed resources of technical assistance showing specific qualifications including how the CSBG eligible entities will be monitored for a specified period of time following the corrective action to assure long-term program and management improvements that will aid the organization from being in the "at-risk category" again.

Budget and Budget Justification 5 Points

Factors: (a) The extent to which the resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) The extent to which total costs are reasonable and consistent with anticipated results. (0–2 points)

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Since ACF will be using non-Federal reviewers in the process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Approved But Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental) and 45 CFR Part 1050.

3. Reporting Requirements

Grantees will be required to submit program progress and financial reports (SF–269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period.

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

VII. Agency Contacts

Program Office Contact

Dr. Margaret Washnitzer, Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209. Phone: 800–281–9519. E-mail: *OCSGRANTS@acf.hhs.gov.*

Grants Management Office Contact

Barbara Ziegler-Johnson, Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209. Phone: 800–281–9519. E-mail: *OCSGRANTS@acf.hhs.gov.*

VIII. Other Information

The FY 2006 President's budget does not include or propose funding for the community Services Block Grant Training and Technical Assistance Program. Future funding is based on the availability of Federal funds.

Direct Federal grants, subaward funds, or contracts under the Administration for Children and Families programs 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 Charitable Choice Provisions Applicable to Programs Authorized under the Community Services Block Grant Act can be found at either 45 CFR Part 1050 or the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

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: *http://www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

Applicants will not be sent acknowledgements of received applications.

Dated: May 5, 2005.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. 05–9427 Filed 5–11–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0316]

Determination of Regulatory Review Period for Purposes of Patent Extension; ERTACZO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for

ERTACZO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ERTACZO (sertaconazole nitrate). ERTACZO is indicated for the topical treatment of athlete's foot (interdigital tinea pedis) caused by certain fungus (*Trichophyton rubrum*, *T. mentagrophytes*, and *Epidermophyton floccosum*). ERTACZO is for people 12 years of age and older who have a normal immune system. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ERTACZO (U.S. Patent No. 5,135,943) from Ferrer Internacional, S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 31, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ERTACZO represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ERTACZO is 2,718 days. Of this time, 1,914 days occurred during the testing phase of the regulatory review period, while 804 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* July 3, 1996. The applicant claims June 11, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 3, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* September 28, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for ERTACZO (NDA 21–385) was initially submitted on September 28, 2001.

3. *The date the application was approved:* December 10, 2003. FDA has verified the applicant's claim that NDA 21–385 was approved on December 10, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,776 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by July 11, 2005. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 8, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 29, 2005.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 05–9462 Filed 5–11–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of National Cancer Institute's Central Institutional Review Board To Improve Cancer Clinical Trials System

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 has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 19, 2004 on page 43003 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: Evaluation of National Cancer Institute's Central Institutional Review Board to Improve Cancer Clinical Trials System. *Type of*

Information Collection Request: NEW. *Need and Use of Information Collection:* This study will evaluate the effectiveness of the Central Institutional Review Board (CIRB), a pilot project designed to streamline the protocol activation process by conducting human subject protection reviews that can be utilized by local Institutional Review Boards (IRB) for facilitated approval of multi-institutional, NCI-sponsored Phase/3 clinical trials. This evaluation includes two surveys that will be made available online to minimize respondent burden. The CIRB survey will assess acceptance level and satisfaction of local IRB chairs, coordinators, and principal investigators with the CIRB. The Cooperative Group Staff Survey will assess the opinions and experiences of the operations and regulations staff of the nine Clinical Trials Cooperative Groups about CIRB operations, office processes, and procedures. The findings will provide valuable information concerning whether the CIRB is meeting its intended goals and will provide recommendations for change and further study. *Frequency of Response:* Once. *Affected Public:* Registered members of the CIRB and Clinical Trials Cooperative Group Staff. *Type of Respondents:* IRB chairs, IRB coordinators, principal investigators, and the operations and regulations staff of Clinical Trials Cooperative Groups. The annualized cost to respondents is estimated at $5,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. *Estimated Number of Respondents:* 279. *Estimated Number of Responses per Respondent:* 1. *Average Burden per Response:* 0.50 hours. *Estimated Total Annual Burden Hours Requested:* 139.50. The total burden estimate per respondent is shown below.

TABLE 1.—TOTAL BURDEN ESTIMATE PER RESPONDENT

Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden per response	Estimated total annual burden hour request
IRB Chairs, IRB Coordinators, principal investigators	225	1	0.50	112.50
Clinical Trials Cooperative Group operations and regulations staff	54	1	0.50	27
Total				139.50

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 functions 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 able 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 items 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 Bryce B. Reeve, PhD, Outcomes Research Branch, ARP, DCCPS, National Cancer Institute, 6130 Executive Blvd. MSC 7344, Bethesda, MD 20892–7344. Phone: (301) 594–6574, e-mail: *reeveb@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 this publication.

Dated: May 1, 2005.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05–9510 Filed 5–11–05; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request, Survey of Colorectal Cancer Screening Policies, Programs, and Systems in U.S. Health Plans

Summary: In compliance with the provisions of Section 3507(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 29, 2004 (Volume 69, No. 209, pages 63159–63160) 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 number.

Proposed Collection: Title: Survey of Colorectal Cancer Screening Policies, Programs, and Systems in U.S. Health Plans. *Type of Information Collection Request:* New. *Need and Use of Information collection:* This study will obtain information on policies, programs, and practices for colorectal cancer screening among health plans in the U.S. The purpose of the study is to assess (1) Health plan policies, programs, and practices for colorectal cancer screening; (2) health plan activities in response to the National Committee on Quality Assurance's new Health Employer Data Information Set measure for colorectal cancer screening; and (3) characteristics of health plans and plan policies and activities that may be associated with higher rates of colorectal cancer screening. A questionnaire will be administered by mail or Internet using a national sample of health plans. Study participants will be health plan medical directors or administrators, and they will select their

preferred response mode. Burden estimates are as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Health plan medical directors	400	1	0.333	133

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 performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency'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 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: Carrie N. Klabunde, Ph.D., Epidemiologist, National Cancer Institute, EPN 4005, 6130 Executive Boulevard, Bethesda, Maryland 20892–7344. Telephone: (301) 402–3362; e-mail: *ck97b@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: May 9, 2005.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05–9512 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Outcome Evaluation of the Small Grants Program for Behavioral Research in Cancer Control

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the (National Cancer Institute), the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 31, 2004, page 53079 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: Outcome Evaluation of the Small Grants Program for Behavioral Research in Cancer Control. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The Small Grants Program support projects that can be completed in a short period of time, such as pilot projects, development and testing of new methodologies, secondary data analyses, or innovative studies that provide a basis for more extended research. This evaluation is being conducted to identify progress of this program in establishing a cohort of scientists with a high level of research expertise in behavioral research cancer control. A primary objective of this study is to determine if the program's small grants R03 funding mechanism is effective in attracting investigators to the field of behavioral research and if so, what impact does the program have on the career of successful applicants. The findings will provide valuable information regarding (1) effectiveness of the program in attracting investigators to the field; (2) the impact of the program on investigators careers; and (3) the overall benefit provided by the program through the R03 funding mechanism and assist the agency in determining whether changes to the program are necessary in future. *Frequency of Response:* On occasion. *Affected Public:* Individuals; teaching institutions or other non-profit. *Type of Respondents:* Grantees funded under PAR 99–996 (n=80). *Type of Respondents:* Principal Investigator awarded grants funded by PAR 00–006 (Dec. 1999–Nov. 2001); *Estimated Number of Respondents:* 80: *Estimated Number of Response per Respondent:* 1; *Average Burden Hours Per Response:* .75; and *Estimated Total Annual Burden Hours Requested:* 60.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Principal Investigators awarded grants funded by PAR 99–006 (Dec. 1999–Nov. 2001)	80	1	0.75	60.0
Total				60.0

Their is no cost to respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

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 functions 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 those who are able 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 Veronica Chollette, RN, MS Program Director, Applied Cancer Screening Research Branch, Behavioral Research Program Division of Cancer Control and Population Sciences, National Cancer Institute, 6130 Executive Blvd., Room 4100, Rockville, MD 20852 or call non-toll free number 301–435–2837 or e-mail your request to: *vc24a@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: May 9, 2005.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05–9513 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors—42 CFR Part 50, Subpart F

Summary: In compliance with he requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed date collection projects, the Office of the Director (OD), the national Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors—42 CFR Part 50, Subpart F. *Type of Information Collection Request:* Revision of OMB No. 0925–0417, expiration date 09/31/2005. *Need and Use of Information Collections:* This is a request for OMB approval for the information collection and recordkeeping requirements contained in the final rule 42 CFR part 50, subpart F and Responsible Prospective Contractors: 45 CFR part 94. The purpose of the regulations is to promote objectivity in research by requiring institutions to establish standards which ensure that there is no reasonable expectation that the design, conduct, or reporting of research will be biased by a conflicting financial interest of an investigator. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State local or tribal government. *Type of Respondents:* Any public or private entity or organization. The annual reporting burden is as follows: *Estimated Number of Respondents:* 42,800; *Estimated Number of Responses per Respondent:* 1.60; *Average Burden Hours per Response:* 3.40; and *Estimated Total Annual Burden Hours Requested:* 232,000. The annualized costs to respondents is estimated at: $8,120,000. Operating costs and/or Maintenance costs are $4,633.

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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mikia Currie, Assistant Project Clearance Officer, Office of Extramural Research (OER) Office of Policy for Extramural Research Administration (OPERA), 6705 Rockledge Drive, Room 1198, Bethesda, MD 20892–7974 or call non-toll-free number (301) 435–0941, e-mail your request including your address to: *curriem@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 9, 2005.

Joe Ellis,

Acting Director, Office of Policy for Extramural Research Administration, National Institutes of Health.

[FR Doc. 05–9514 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in the Government in the Sunshine Act, sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended, because the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of information and the discussions are likely to significantly frustrate the implementation of the program.

Name of Committee: Advisory Committee to the Director, NIH.

Date: June 2, 2005.

Closed: June 2, 2005, 8:30 a.m. to 9:30 a.m

Agenda: Evaluation of the NIH Top Ten Research Advances.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: June 2, 2004, 9:30 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) NIH Director's Report; (2) update on NIH ethics and conflict of interest; (3) update on the NIH Roadmap and Director's Pioneer Awards; and (4) workgroup report on outside awards for NIH employees.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Sara L. Alden, Information Development Specialist, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 332, Bethesda, MD 20892, Phone: (301) 594–9551, *Aldens@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9511 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Review of a Program Project Grant Application.

Date: June 13–14, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Denver Airport Marriott, 6901 Tower Road, Denver, CO 80249.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328. 301–496–9767.

(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: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9505 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel, Non-Invasive Imaging For Diabetic Retinopathy RFA.

Date: May 16, 2005.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Conference Room—508, Bethesda, MD 20892.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute. 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020.

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. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9502 Filed 5–11–05; 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 a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance

with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 12–14, 2005.

Time: 7 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381. 301–496–3501.

(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: May 5, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9498 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Clinical and Pediatric Research.

Date: May 23, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12, Bethesda, MD 20892.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12F, Bethesda, MD 20892, 301–594–2881. *sunshinh@nigms.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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9500 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Controller Development for Upper Limb Movement.

Date: May 23, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902 Khanh@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. 93.864, Population Research; 93.865, Research for Mothers and Children, 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9501 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition C Subcommittee.

Date: June 23–24, 2005.

Open: June 23, 2005, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 23, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 24, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9503 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel 05–70, Review R21s (Genetics).

Date: June 14, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (telephone conference call).

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892 (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–60, Review R25.

Date: June 30, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (telephone conference call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–58, Review R21s.

Date: July 14, 2005.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (telephone conference call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 593–4861. *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–66, Review of R21s (Perio/Micro).

Date: July 18, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (telephone conference call).

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–65, Review R21s (Oral Cancer).

Date: July 19, 2005.

Time: 10:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 593–4861, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9504 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 on Drug Abuse Special Emphasis Panel; SBIR II—"Novel CBI Receptor Antagonists".

Date: May 25, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9508 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Medication Development Research Subcommittee.

Date: June 6, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Coulis, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401. (301) 443–2105.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Health Services Research Subcommittee.

Date: June 7–8, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1431.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Treatment Research Subcommittee.

Date: June 7–8, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Member Conflict A.

Date: June 7, 2005.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Member Conflict B.

Date: June 8, 2005.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Secondary Data Analysis of NESARC and NSPY Studies.

Date: July 7–8, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard Suite 220, Bethesda, MD 20892–8401. (301) 435–1389. *ms80x@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Centers Review Meeting.

Date: July 12, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: July 19–21, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institutes of Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401. (301) 451–4530. *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9509 Filed 5–11–05; 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 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 Library of Medicine Special Emphasis Panel; IAIMS.

Date: June 10, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9507 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 15–16, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: The Committee will review and discuss selected human gene transfer protocols as well as related data management activities.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838; *lewallla@od.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 5, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9499 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biology of Development and Aging Integrated Review Group; Development—1 Study Section.

Date: June 9–10, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892. (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; KNOD Member Conflict.

Date: June 10, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892. (301) 435–1782, *osbornes@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group; Tumor Cell Biology Study Section.

Date: June 12–14, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Angela Y. Ng, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20217), Bethesda, MD 20892. (301) 435–1715, *nga@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Etiology Study Section.

Date: June 13–15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892. (301) 435–3504. *fungv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering.

Date: June 13, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892. (301) 435–2212. *josephru@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Regulation of Vascular Function.

Date: June 14, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122,

MSC 7802, Bethesda, MD 20892. (301) 435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HD–04–026: Developing Outcome Measures for Young Children.

Date: June 15, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D MSC 7759, Bethesda, MD 20892. (301) 451–9956. *gboyd@mail.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: June 16–17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC 1400 M Street, NW., Washington, DC 20005.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. (301) 435–1151. *pyperj@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Biology and Diseases of the Posterior Eye.

Date: June 16–17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892. (301) 435–0910. *chaitinm@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: June 16–17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892. (301) 435–1184. *joshij@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: June 16–17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435–0676. *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Intercellular Interactions.

Date: June 16–17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; IFCN Fellowships—Behavioral Neuroscience.

Date: June 16–17, 2005.

Time: 9 a.m. to 5 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: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892. (301) 435–1245. *marcusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Social Science and Population Studies R03s, R21s, and Fellowships.

Date: June 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 435–3554. *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–04–023: Bioengineering Research Partnerships.

Date: June 17, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Xiang-Ning Li, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892. *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications in Adolescent Depression.

Date: June 17, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capitol Hill, 550 C Street, SW., Washington, DC 20024.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435–0676. *siroccok@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.

Date: June 19–21, 2005.

Time: 7 p.m. to 5 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: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892. (301) 435–1172. *livingsc@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Vascular Cell and Molecular Biology Study Section.

Date: June 20–21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: June 20–21, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044. *leszczyd@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Synapses, Channels, and Transporters Study Section.

Date: June 20–21, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892. (301) 435–1265. *langm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review

Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: June 20–21, 2005.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0913. *shirleym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Technology, and Surgical Sciences.

Date: June 20, 2005.

Time: 2 p.m. to 4 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: Roberto J. Matus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. (301) 435–2204. *matusr@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7814, Bethesda, MD 20892. (301) 435–1375. *ot3d@nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear Dynamics and Transport.

Date: June 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Charles R. Dearolf, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892. (301) 435–1024. *dearolfc@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: June 21–22, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. (301) 435–1781. *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Etiological Factors of Eating Disorders.

Date: June 21, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0913. *shirleym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of a Bioengineering Research Partnership Proposal.

Date: June 21, 2005.

Time: 2 p.m. to 4 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: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 451–3848. *ainsztea@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: June 22–23, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892. (301) 435–1178. *fujiij@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: May 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–9506 Filed 5–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the teleconference meeting of the Center for Mental Health Services (CMHS) National Advisory Council on May 16, 2005.

The meeting will include the review, discussion and evaluation of individual grant applications. This discussion could reveal personal information concerning individuals associated with the applications. Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2., Section 10(d).

A summary of the meeting and a roster of Council members may be obtained by accessing the SAMHSA Advisory Council Web site (*http://www.samhsa.gov*) as soon as possible after the meeting or by communicating with the contact whose name and telephone number are listed below.

Committee Name: Substance Abuse and Mental Health Services Administration Center for Mental Health Services National Advisory Council.

Meeting Date: May 16, 2005.

Type: Closed 1 p.m.–2:30 p.m.

Place: 1 Choke Cherry Road, Conference Room 6–1060, Rockville, Maryland 20852.

Contact: Dianne McSwain, M.S.W., 1 Choke Cherry, Room 6–1083, Rockville, Maryland 20852, Telephone: (240) 276–1828; Fax: (240) 276–1850, E-mail: *Dianne.McSwain@samhsa.hhs.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitation imposed by the review and funding cycle.

Dated: May 9, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 05–9552 Filed 5–10–05; 1:02 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Arrival and Departure Record (I–94)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Arrival and Departure Record (I–94). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 10108) on March 2, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 13, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Arrival and Departure Record.

OMB Number: 1651–0111.

Form Number: I–94, I–94W and I–94T.

Abstract: These forms are used to deliver to the CBP Officers at the port of arrival lists or manifests of persons on board arriving and departing vessels and aircrafts. These forms are completed by the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 18,124,380.

Estimated Time Per Respondent: 24 hours.

Estimated Total Annual Burden Hours: 1,352,209.

Estimated Total Annualized Cost on the Public: $120,958,321.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: May 3, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–9519 Filed 5–11–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Establishment of a Bonded Warehouse: Bonded Warehouse Regulations

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Establishment of a Bonded Warehouse: Bonded Warehouse Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 10108–10109) on March 2, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 13, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Establishment of a Bonded Warehouse (Bonded Warehouse Regulations).

OMB Number: 1651–0041.

Form Number: N/A.

Abstract: 19 CFR section 19 sets forth requirements for bonded warehouses. This includes applications needed to establish a bonded warehouse; to receive free materials the warehouse; and to make alterations, suspensions, relocation or discontinuance of a bonded warehouse.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 198.

Estimated Time Per Respondent: 24 hours.

Estimated Total Annual Burden Hours: 4,910.

Estimated Total Annualized Cost on the Public: $108,020.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: May 3, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–9520 Filed 5–11–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Record of Decision for Customs and Border Protection's Office of Border Patrol Operation Rio Grande in the Office of Border Patrol McAllen Sector, Texas

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Record of decision general notice.

SUMMARY: This Record of Decision (ROD) document announces the final decision regarding the Environmental Impact Statement (EIS) for the Office of Border Patrol's Operation Rio Grande regarding potential environmental impacts resulting from Customs and Border Protection's (CBP), Office of Border Patrol (OBP), deployment of the lighting, roads, fences, mowing and boat ramp construction on the United States and Mexican border in the McAllen Sector of the OBP. The final EIS for Operation Rio Grande was made available for public review and was filed for public review with the U.S. Environmental Protection Agency, which published it in the **Federal Register** on June 17, 2004. This ROD will be incorporated into the final EIS after publication. The Operation Rio Grande has five project actions covered by this EIS: Lighting installation (permanent and portable), road improvement, fencing construction, boat ramp construction, and mowing. These actions are intended to reduce the influx of illegal entrants and contraband into the McAllen Sector, increase arrest of those not deterred; increase safety for operations by OBP agents; decrease response time; and decrease the risk from drowning as victims attempt to cross the river and/or irrigation canals. Since September 11, 2001, terrorist activities have also become a major focus of the OBP. This EIS was prompted by a lawsuit brought by the Defenders of Wildlife because of the potential impact that OBP activities may have on the habitat of two endangered species in the area, the ocelot *(Leopardus pardalis)* and jaguarundi *(Hepailurus yagouaroundi)* cats. The adjustments to lighting and other construction and mowing activities are incorporated into this ROD and were agreed to by the OBP and the Defenders of Wildlife in the settlement agreement for *Defenders of Wildlife* v. *Meissner*. The final EIS reflects this agreement and states that no significant impacts occur to geology, soils, climate, or air quality. Short-term disturbances may occur to water resources. Aquatic systems could be impacted; however, the effects will decrease over time. The socioeconomic impacts would primarily be beneficial. Lastly, some immediate and direct impacts to wildlife from construction activities would occur. Smaller and less mobile wildlife such as amphibians, reptiles, and small mammals may be adversely impacted by heavy machinery. The increased noise and activity levels during constructions could temporarily disturb breeding behavior of some wildlife inhabiting the areas adjacent to the project; however, little permanent damage to the populations of such organisms would result. The proposed lighting improvements could potentially impact migration, dispersal, and foraging activities of nocturnal species. Two endangered species, the ocelot and jaguarundi, could potentially be impacted by the proposed project. These species are largely nocturnal, and it is expected they would avoid illuminated areas. Extensive coordination with the U.S. Fish and Wildlife Service was conducted to determine the position and direction of the proposed lighting structures to minimize the illumination to brush and other types of screening cover for these animals. Proposed mitigation measures such as road closures and habitat construction would increase the amount of habitat for these species. Reducing illegal immigrant traffic in the McAllen Sector would further reduce impacts to the habitat. Some, as yet, unidentified cultural resource sites may be impacted but mitigation will be provided through an initial assessment of the site, its anticipated severity, and proposals for the appropriate mitigation will be coordinated with the State Historic Preservation Officer.

FOR FURTHER INFORMATION CONTACT: Bureau of Customs and Border Protection, Suite 3.4–D, 1300 Pennsylvania Avenue, NW., Washington DC 20229, Attn: Mr. Kevin Feeney. Mr. Feeney is also available at (202) 344–2336 or at *Kevin.Feeney@dhs.gov*. No public comment period is required for the ROD.

Record of Decision

Operation Rio Grande Starr, Hidalgo, and Cameron Counties, Texas

I have reviewed the final Environmental Impact Statement (EIS) for Operation Rio Grande, as well as correspondence received in response to

coordination and public review of the draft EIS.

Operation Rio Grande is a strategy initiated in August 1997 by the Office of Border Patrol (OBP, formerly the U.S. Border Patrol (BP)), a Federal law enforcement branch of the Bureau of Customs and Border Protection (CBP, which includes functions transferred from the former Immigration and Naturalization Service (INS)), to aid in reducing illegal immigration and drug trafficking along the Rio Grande corridor of the McAllen Sector of the OBP. The purpose of the proposed project is to facilitate OBP missions to reduce or eliminate illegal drug activity and illegal entry along the southwestern border of the United States and to reduce the flow of illegal immigrants into the United States.

A draft Environmental Assessment (EA) for Operation Rio Grande was circulated for review and comment to Federal, State, and local agencies and to organizations, public groups, and the local public known to have an interest in the project in September 1998. Comments received on the draft EA were addressed, and the EA became final in August 1999. However, the final EA was never distributed, because the Defenders of Wildlife filed a lawsuit in August 1999 (*Defenders of Wildlife* v. *Meissner D.D.C.* case no. 1:99CV02262) against the former INS and BP challenging Operation Rio Grande. This case was settled on September 8, 2000. Pursuant to the settlement agreement, OBP prepared an EIS that analyzed the potential beneficial and adverse impacts of Operation Rio Grande in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended.

Five project actions were covered by the EIS: Lighting installation, road improvement, fencing construction, boat ramp construction, and mowing. These actions are intended to reduce the influx of illegal immigration and drugs into the McAllen Sector, especially into towns; increase arrests of those not deterred; increase safety for operations by OBP agents; decrease response time; and decrease the risk from drowning as illegal entrants attempt to cross the river and/or irrigation canals. In light of the September 11, 2001, terrorist activities, securing the U.S. borders against illegal entry has become an increased focus of the OBP. The proposed project actions presented in the EIS are anticipated to significantly aid in securing the U.S. border against illegal entry of any kind.

Two types of lighting are addressed in the final EIS: Permanent and portable. All portable lighting is currently in place; no more portable lighting is proposed in the final EIS. All proposed lighting is the permanent type. Proposed lighting locations were determined by the OBP agents in each McAllen Sector Station based on their knowledge of traffic in their station and on the site-specific needs of each station to deter or direct traffic in that station. Lighting acts as a deterrent to illegal immigration and smuggling, and as an aid to the OBP agents in capturing illegal entrants or smugglers after they have entered the United States. It also provides protection to illegal entrants from criminals on the United States side of the Rio Grande.

Road improvement (adding caliché to the road surface) is necessary to allow the present and incoming agents to effectively perform the functions required of them. Additionally, upgrading the most crucial roads to all-weather roads would lead to a reduction in the number of roads needed. All road improvements addressed in the final EIS are on existing roads; no new construction is planned. Caliché is the most benign all-weather topping available, and its use is proposed for Operation Rio Grande road improvements.

Border fences are located mostly in urbanized areas near the land Ports of Entry and are an effective deterrent to illegal drug and immigrant trafficking. Fencing also facilitates enforcement actions by hindering escape. Fencing has proved to be an effective measure for controlling the border.

The McAllen Sector currently has a fleet of 18 boats and none will be added to this fleet specifically because of Operation Rio Grande. The boats are used for surveillance, observation, and information gathering and, therefore, are operated as inconspicuously as possible. The boats are not used for pursuit since they are on international waters. Boat ramps are utilized along the Rio Grande and other large surface-water bodies by OBP agents and other law enforcement officers to deter and/or apprehend those involved in illegal activities. These illegal activities include drug smuggling and transport of illegal immigrants by boat, as well as persons involved in smuggling or trying to enter the United States illegally by wading or swimming.

Currently, under a Memorandum of Understanding between the U.S. - International Boundary and Water Commission (USIBWC) and U.S. Fish and Wildlife Service (FWS), the USIBWC mows certain areas between the USIBWC levee and the Rio Grande once a year between July and October. Despite the annual mowing, some of the herbaceous vegetation grows tall enough to hinder the efforts of the OBP to apprehend illegal entrants and drug traffickers. Increased mowing would make it easier and safer for OBP agents to apprehend these persons.

The application of Operation Rio Grande dictates that a viable alternative be one that meets the purpose and need to develop a border security system that also meets the mission of the OBP. Two alternatives, the No-Action Alternative and the Preferred Alternative, were carried forward throughout the final EIS since all other alternatives (more lighting with larger coverage area, including some in National Wildlife Refuges and inside the USIBWC flood control levee; different placement and aiming of the lighting; additional boat ramps; different boat ramp locations; additional mowings; extensive fencing) were eliminated from consideration through a dynamic application of the intent of the NEPA process using interagency coordination and cooperation (final EIS, Section 2.3). Two public meetings for Operation Rio Grande were held in April 2001. The purpose of the meetings was to get public input on what issues and alternatives should be addressed in the EIS. The public's view, and concerns were used in the preparation of the EIS. One or more copies of the draft EIS (DEIS) were sent to State and Federal resource agencies, and the general public on February 20, 2003, requesting comments by April 14, 2003. However, a public notice soliciting comments on the DEIS was not published in the **Federal Register** until March 21, 2003, and the comment period was extended by letter and newspaper notice until May 5, 2003. Those comments are included in the final EIS in Appendix D.

The purpose of the actions, as noted in Section 1.2 of the final EIS, is to increase the efficiency and safety of the OBP agents and the safety of U.S. citizens and illegal entrants in the McAllen Sector while the OBP agents fulfill their obligations under U.S. laws and directives. It was noted in the final EIS that the number of OBP agents is not determined by Operation Rio Grande, although the method in which they are used is. The recommended plan is a mix of various actions to provide the optimum multitiered approach to achieve the purpose of Operation Rio Grande.

Under the No-Action Alternative, the actions proposed in the final EIS would not occur and present practices would continue. The No-Action Alternative would not increase or decrease the number of OBP agents in the sector but would tend to concentrate them along the river. Because of a Congressional Mandate (final EIS, Section 2.1), there

will be an increase in the number of OBP agents in all areas of the country, with a concomitant increase in the number of vehicles.

The following actions comprise the recommended plan for Operation Rio Grande at the six OBP stations in the McAllen Sector:

Rio Grande City Station: (3.5 miles of permanent lighting and 6 boat ramps); McAllen Station (4 miles of permanent lighting, 6.4 miles of road improvement, and 2 boat ramps); Mercedes Station (11.1 miles of permanent lighting, 30 miles of road improvement, and 3 boat ramps); Harlingén Station (1.7 miles of permanent lighting (43 portable lights along 4.6 miles currently exist), 16 miles of road improvement, and 3 boat ramps); Brownsville Station (19 miles of road improvement, 5 boat ramps, 3.8 miles of fencing, and mowing (79 portable lights over a 13-mile distance and 30 permanent light poles along 1.5 miles currently exist)); and Port Isabel Station (16 miles of road improvement, 4 boat ramps, and 1.6 miles of fencing (64 portable lights along 11 miles currently exist)). The Harlingen, Brownsville, and Port Isabel Stations currently have portable lighting and the Brownsville Station currently has permanent lighting, as agreed to under the settlement of the lawsuit noted above. No new lighting is proposed for the Brownsville and Port Isabel Stations and only permanent lighting is proposed for the Harlingen Station. The current permanent/portable lighting at these three stations, however, was addressed in the final EIS.

The proposed project is not expected to produce any significant long-term or cumulative adverse impacts on the human or natural environment, as defined in the Council of Environmental Quality Regulations (40 CFR 1508.27). As noted in detail in the final EIS, essentially no impacts, beneficial or adverse, to the physiography, geology, soils, climate, water resources, aquatic systems, wildlife, cultural resources, aesthetics, noise, or air quality of the area are anticipated and there were no indications of hazardous wastes. There will be some local, beneficial impacts to vegetation from reduced trampling of vegetation and littering by illegal entrants and drug traffickers and from road closures. The proposed lighting improvements could potentially have minor, local adverse impacts on migration, dispersal, and foraging activities of nocturnal species. Two endangered species could potentially be impacted by the proposed project, the ocelot (*Leopardus pardalis*) and jaguarundi (*Hepailurus yagouaroundi*). These species are largely nocturnal and it is expected they would avoid illuminated areas. Extensive coordination with the FWS was conducted to determine the position and direction of the proposed lighting structures to minimize the illumination to brush and other types of screening cover. Proposed mitigation measures, such as road closures and habitat construction, would increase the amount of habitat for these species. Reducing illegal immigrant traffic in the McAllen Sector would further reduce impacts to the habitat. Therefore, both the final EIS and the FWS Biological Opinion conclude that no significant adverse impacts will accrue to these species.

The only significant impacts would be socioeconomic. The socioeconomic impacts would be long-term and beneficial, both nationally and locally, primarily from the long-term reduction of flow of illegal drugs into the United States and the concomitant effects upon the Nation's health and economy, drug-related crimes, community cohesion, property values, and traditional family values. Residents of the border towns would benefit from increased security, a reduction in illegal drug-smuggling activities and the number of violent crimes, less damage to and loss of personal property, and less financial burden for entitlement programs. This would be accompanied by the concomitant benefits of reduced enforcement and insurance costs. Minor short-term local employment may be generated during the construction phase of the proposed action.

I have reviewed and evaluated the documents concerning the proposed actions, views of other interested agencies and parties, and the various practical means to avoid or minimize environmental impacts. Based on these considerations, I conclude that all practical means to avoid or minimize environmental impacts have been incorporated into the preferred plan. I find the preferred plan to be economically justified, in compliance with environmental statutes, and in the public interest.

Dated: April 15, 2005.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[FR Doc. 05–9518 Filed 5–11–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–24]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the general public, which may participate by following the instructions below.

DATE: The conference call meeting will be held on Wednesday, May 25, 2005, from 11 a.m. to 3 p.m. eastern time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can log onto NFPA's Web site for instructions on how to participate, and for contact information for the conference call: *http://www.nfpa.org/categoryList.asp?categoryID=858.*

Alternately, interested parties may contact Jill McGovern of NFPA by phone at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 4503(a)(3). The Committee is charged with providing

recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of this conference call meeting is for the Committee to review and make recommendations to the Secretary on Title 24, Code of Federal Regulations, Part 3280 and 3285, Model Manufactured Home Installation Standards; Proposed Rule.

Tentative Agenda

A. Roll Call.
B. Welcome and Opening remarks.
C. Full Committee meeting for discussion and to take an action regarding the Model Manufactured Home Installation Standards; Proposed Rule that was published in the **Federal Register** on Tuesday, April 26, 2005.
D. Adjournment.

Dated: May 9, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. 05–9535 Filed 5–9–05; 3:58 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0019; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) plan to request that OMB renew approval for information collection associated with FWS Form 3–156 (North American Woodcock Singing Ground Survey). The current OMB Control Number for this information collection is 1018–0019, which expires October 31, 2005. We plan to request that OMB renew its approval of this information collection for a 3-year term.

DATES: You must submit comments on or before July 11, 2005.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related form, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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 Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j) designate the Department of the Interior as the key agency responsible for (1) wise management of migratory bird populations frequenting the United States and (2) setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. State, Federal, Provincial, local, and tribal conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that are not sufficiently restrictive, which could cause harm to the woodcock population, or too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting. The Service, State conservation agencies, university associates, and other interested parties use the data for various research and management projects.

Title of Collection: North American Woodcock Singing Ground Survey.

OMB Control Number: 1018–0019.

Service Form Number: 3–156.

Frequency of Collection: Annually.

Description of Respondents: State, Federal, Provincial, tribal, and local biologists.

Total Annual Responses: 750.

Total Annual Burden Hours: 571 hours. The reporting burden is estimated to average 0.67 hours per respondent. With an estimated 70 percent of the respondents entering data electronically, the reporting burden is estimated to average 0.8 hours per respondent.

We invite your comments concerning this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our migratory bird management functions, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of burden; (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. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552a).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the administrative record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Dated: April 22, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–9430 Filed 5–11–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0010; Mourning Dove Call Count Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) plan to request that OMB renew approval for information collection associated with FWS Form 3–159 (Mourning Dove Call Count Survey). The current OMB Control Number for this information collection is 1018–0010, which expires October 31, 2005. We plan to request that OMB renew its approval of this information collection for a 3-year term.

DATES: You must submit comments on or before July 11, 2005.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related form, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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 Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j) designate the Department of the Interior as the key agency responsible for (1) wise management of migratory bird populations frequenting the United States and (2) setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The Mourning Dove Call Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between the Service and State wildlife agencies, as well as local and tribal biologists. Each spring, State, Service, local, and tribal biologists conduct the survey to provide the necessary data to determine the population status of the mourning dove. The Service and the States use the survey results to develop annual regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research. If this survey were not conducted, there would be no way to determine the population status of mourning doves prior to setting regulations.

Title of Collection: Mourning Dove Call Count Survey.

OMB Control Number: 1018–0010.

Service Form Number: 3–159.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, and Federal biologists.

Total Annual Responses: 1,062.

Total Annual Burden Hours: 2,797.6 hours. The reporting burden is estimated to average 2.5 hours per respondent. With an estimated 80 percent of the respondents entering data electronically, the reporting burden is estimated to average 2.67 hours per respondent.

We invite your comments concerning this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our migratory bird management functions, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of burden; (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. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552a).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the administrative record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Dated: April 22, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–9431 Filed 5–11–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–05–1040–PH–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet June 13 (1–5) and June 14 (8-Noon), 2005, in Castle Dale, Utah. On June 13, the RAC will meet in the Castle Dale Courthouse which is located at 75 East Main, Castle Dale, Utah. A half-hour public comment period is scheduled to begin at 4:30 p.m. Written comments may be sent to the Bureau of Land Management address listed below. A field trip to the San Rafael Swell is scheduled for June 14.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah, 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: On June 13, the RAC will be given an update on the Richfield's Resource Management Plan (RMP); a presentation on Recreation Use Permits and the new regulation changes; an update from the San Rafael Swell Subgroup; a discussion on monitoring (how we can build it into the RMPs); revisiting the OHV issues; and, listening to a presentation from the Goodwill Riders Program. On June 14,

the RAC will meet at the Castle Dale Courthouse for a field trip to the Wedge, in the San Rafael Swell, looking at the challenges in the past and at various camping areas; visiting the Buckhorn Wash rock art panel and discussing the ATV use in the area; and will be given a presentation on the San Rafael Route Designation Plan.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: May 3, 2005.

Gene Terland,

Associate State Director.

[FR Doc. 05–9487 Filed 5–11–05; 8:45 am]

BILLING CODE 4310–DK–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–018]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 18, 2005 at 3 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–125 (Second Review) (Potassium Permanganate from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 31, 2005.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 9, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–9575 Filed 5–10–05; 11:18 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on May 2, 2005, a proposed Consent Decree in *United States* v. *E.I. du Pont de Nemours,* ("DuPont") C.A. No. 3–05 0345 was lodged with the United States District Court for the Middle District of Tennessee.

In this action, the United States sought civil penalties and injunctive relief against E.I. du Pont de Nemours and Company ("DuPont") for violations of the repair, testing, recordkeeping and reporting regulations for appliances which use ozone-depleting substances 40 CFR part 82, subpart F, §§ 82.152–82.166 ("Recycling and Emissions Reduction") promulgated pursuant to Subchapter VI of the Clean Air Act, 42 U.S.C. 7671–7671q, ("Stratospheric Ozone Protection") ("CAA"). The alleged violations occurred at DuPont's titanium dioxide manufacturing facility located in New Johnsonville, Tennessee.

The proposed Consent Decree provides for injunctive relief valued at $1.7 million, payment of $250,000 in civil penalties, and the performance of a Supplemental Environmental Project ("SEP") valued at $1.2 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resourses Division, U.S. Department of Justice, P.O. Box 611, Washington, DC 20044–7611; and refer to *United States* v. *E.I. du Pont de Nemours,* ("DuPont") DOJ Ref. #90–5–2–1–08054.

The proposed settlement agreement may be examined at U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303—Attention Leif Palmer. During the comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.*

A copy of the proposed Consent 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 of the Decree from the Consent Decree Library, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost for 38 pages) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief Environmental Enforcement Section.

[FR Doc. 05–9437 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 42 U.S.C. 9622(d)(2)(A) and (B) and Departmental policy, notice is hereby given that on April 27, 2005, a proposed consent decree in the case captioned *United States of America and the State of Illinois* v. *Kerr-McGee Chemical LLC,* Civil Action No. 05 C 2318 (N.D. Illinois), was lodged with the United States District Court for the Northern District of Illinois.

This action under CERCLA Sections 106 and 107(a) involves four Superfund Sites in and around the City of West Chicago, Illinois: the Residential Areas Site ("RAS"), the Reed-Keppler Park ("RKP") Site; the Kress Creek/West Branch of DuPage River ("Kress Creek") Site; and the Sewage Treatment Plant ("STP") Site (collectively "Sites"). In a four count complaint, the United States and Illinois sought response costs at all four of the Sites, natural resource damages ("NRD") at three Sites, and remediation at two Sites that have not yet been cleaned up.

Under the Consent Decree, Kerr-McGee agrees to: (1) Perform the remedial actions selected by EPA for the two Sites that have not yet been cleaned up (the Kress Creek Site and the STP River Operable Unit ("OU")); (2) implement a natural resources restoration plan for the stream bed, the stream banks, and riparian areas that will be damaged by the remedial work at these two Sites; (3) perform minor, remaining remedial action, monitoring and restoration work at the RAS, RKP Site, and the STP Upland OU; (4) undertake additional restoration activities in the amount of approximately $800,000; (5) reimburse EPA $6 million for past response costs; (6) pay EPA 100% of future, non-oversight response costs; (7) pay EPA up to $1.675 million for future oversight costs; (8) pay the State $100,000 for NRD-related costs; (9) page DOI $75,000 for NRD-related costs; (10) withdraw with prejudice a pending CERCLA 106(b) claim against EPA for reimbursement of costs incurred at the RKP Site; and (11) covenant not to sue the United States for any costs relating to the four Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent 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,* et al. v. *Kerr-McGee Chemical, LLC,* D.J. Ref. No. 90–11–2–07349/1.

The Consent Decree may be examined at: (1) The United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; (2) the City of West Chicago Public Library, 118 W. Washington St., West Chicago, IL 60185; and (3) the Warrenville Public Library, 28W751 Stafford Place, Warrenville, IL 60555. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree without Appendices may 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 number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check on the amount of $24.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–9441 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Park System Resource Protection Act ("PSRPS")

Pursuant to 28 CFR 50.7, notice is hereby given that on May 5, 2005, a proposed Consent Decree in *Travelers* v. *Nudel and United States and United States* v. *Nudel and MV/GI Jack,* 04–20015–CIV–Cooke/Brown (S.D.Fl.), was lodged with the United States District Court for the Southern District of Florida.

In this action the United States sought to recover against Defendants Jack Nudel and M/V GI Jack costs for response and damage assessment and damages arising from the grounding of the M/V GI Jack in Biscayne National Park on November 12, 2001.

Under the Consent Decree, Defendant Nudel will perform primary restoration of seagrass damaged by the grounding and compensatory restoration of an area near the grounding site. Defendant Nudel will also pay the United States $3,272.58 in reimbursement of the United States' damage assessment and response costs and $7,000 toward the cost of National Park Service oversight of the restoration work.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Consent 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 *Travelers* v. *Nudel and United States and United States* v. *Nudel and M/V GI Jack,* 04–20015–CIV–Cooke/Brown (S.D.Fl.), DOJ Ref. 90–11–2–08248.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Florida, 99 NE. 4th Street, Civil Division, Suite 300, Miami, Florida 33132, and at the National Park Service, Environmental Quality Division, Environmental Response, Damage Assessment and Restoration Branch, 77 Forsyth Street, SW., Suite G–4, Atlanta, Georgia 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.htm.* A copy of the Consent 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 refer to *Travelers* v. *Nudel and United States and United States* v. *Nudel and M/V GI Jack,* 04–20015–CIV–Cooke/Brown (S.D.Fl.), DOJ Ref. 90–11–2–08248, and enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 05–9438 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; ASTM International—Standards

Notice is hereby given that, on April 12, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International—Standards ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between January 2005 and April 2005, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226). The last notification was filed on January 21, 2005. A notice was published in the **Federal Register** on February 11, 2005 (70 FR 7307).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, at ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone #610–832–9597, e-mail address *tobrien@astm.org.*

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–9527 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electronic Healthcare Network Accreditation Commission

Notice is hereby given that, on March 8, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Electronic

Healthcare Network Accreditation Commission ("EHNAC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Electronic Healthcare Network. Accreditation Commission, Farmington, CT. The nature and scope of EHNAC's standards development activities are: to set standards for electronic health care industry participants to facilitate the electronic transmission of bills and payments in a manner consistent with all federal laws and regulations. EHNAC establishes criteria to determine whether individual electronic industry participants are compliant with industry standards, and it provides accreditation to electronic health care industry participants to certify that such participants are compliant with applicable standards. The standards promote excellence, innovation, cooperation, open competition and timely regulatory compliance within the health care industry in order to improve the quality of healthcare delivery, to protect the security and privacy of patient-identifiable information and achieve administrative simplification and cost savings.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–9528 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Joint Industry Project for Fluid Properties Meter Development and Support

Correction

In notice document 05–1986 appearing on pages 5487–5488 in the issue of Wednesday, February 2, 2005, make the following corrections:

1. On page 5488, in the first column, second through third line, "SwRI: Fluid Properties Meter" should read "Southwest Research Institute".

2. On the same page, in the same column, after the nineteenth line, the following paragraph should be added: "Membership in this group research project remains open, and participants intend to file additional written notification disclosing all changes in membership or planned activities."

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–9524 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 6, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IPTC Corporation, Tokyo, Japan; and Consortium Brazil-IP Network, Recife, Brazil have been added as parties to this venture. Also, Pittsburgh Digital Greenhouse, Pittsburgh, PA; Amphion Semiconductor, Ltd., Belfast, Ireland; Denso Corporation, Aichi, Japan; Digitas, Tranby, Normway; and Bitboys Oy, Noormarkku, Finland have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on January 19, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 23, 2005 (70 FR 8823).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–9526 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—World Airline Entertainment Association

Notice is hereby given that, on April 18, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), World Airline Entertainment Association ("WAEA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, on February 25, 2005, WAEA's Board of Directors adopted WAEA Specification 1289–2. This document establishes guidelines for the recording and duplication of program master tapes for airborne audio software, and incorporates guidelines for compact disc replication and digital encoding of audio files.

On September 15, 2004, WAEA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64108).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–9525 Filed 5–11–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The eighth meeting of the Federal Economic Statistics Advisory Committee will be held on June 10, 2005, in the Postal Square Building, 2

Massachusetts Avenue NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9:15 a.m. Opening session.
9:45 a.m. Alternative output measures (production accounts).
11:30 a.m. Priorities for future meetings.
1 p.m. Births and deaths in business surveys.
3:15 p.m. Treatment of medical care in price indexes.
4:45 p.m. Conclude (approximate time).

The meeting is open to the public. Any questions concerning the meeting should be directed to Margaret Johnson, Federal Economic Statistics Advisory Committee, on Area Code (202) 691–5600. Individuals with disabilities, who need special accommodations, should contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, DC, the 5th day of May, 2005.

Kathleen P. Utgoff,

Commissioner of Labor Statistics.

[FR Doc. 05–9463 Filed 5–11–05; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Business Meeting

AGENCY: U.S. National Commission on Libraries and Information Science, (NCLIS)

ACTION: Notice of meeting.

SUMMARY: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Commissioners will review programs related to the Commission's strategic initiatives. Each of the Commission's task forces will share progress reports and the Commission will discuss future directions and activities. Leaders of several professional associations will describe their interest in the Commission and its work from their organizations' particular perspectives.

Date and Time: NCLIS Business Meeting—May 23, 2005, 9 a.m. until 5 p.m. and May 24, 9 a.m. until 12 noon.

ADDRESSES: On May 23: Room LJ 113, Jefferson Building, Library of Congress, 10 First Street, SE., Washington, DC 20540. On May 24: Thoroughbred Room, Hilton Washington Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Status: Open meeting.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Kathleen Lannon, Administrative Officer, 1800 M Street, NW., Suite 350, Washington, DC 20036, e-mail *klannon@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

Dated: May 6, 2005.

Trudi Bellardo Hahn,

Executive Director.

[FR Doc. 05–9445 Filed 5–11–05; 8:45 am]

BILLING CODE 7528–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–06]

Notice of the May 20, 2005 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10:30 a.m.–12:30 p.m., Friday, May 20, 2005.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Joyce B. Lanham via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be open to the public from 10:30 a.m. until the conclusion of the administrative session; a closed session will commence immediately following the conclusion of the open session, at approximately 10:50 a.m.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting of the Board to discuss and consider a proposed Millennium Challenge Account ("MCA") Compact under the provisions of section 605(a) of the Millennium Challenge Act, codified at 22 U.S.C. 7706(a); other information relating to Compact development efforts with other MCA-eligible countries; the MCC Threshold Program; and certain administrative matters. The majority of the meeting will be devoted to a discussion of a proposed MCA Compact with the Republic of Honduras, which is expected to involve the consideration of classified information and will be closed to the public. A brief open session that will include a CEO update for the Board on MCC operations will precede the closed session.

Due to security requirements at the meeting location, all individuals wishing to attend the open portion of the meeting are encouraged to arrive at least thirty minutes before the meeting begins and comply with all relevant security requirements of the Department of State. Those planning to attend must notify Joyce B. Lanham via e-mail at *Board@mcc.gov* or by telephone (202) 521–3600 by noon on Monday, May 16, 2005, with the following information: full name, telephone number, e-mail address, affiliation/company name, social security number and date of birth. Please bring a photo ID with you on the day of the meeting. Seating for the brief open session will be available on a first come, first served basis.p

Dated: May 10, 2005.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–9616 Filed 5–10–05; 2:07 pm]

BILLING CODE 9210–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 13, 2005, to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number (301) 837–1694 or fax number (301) 837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on January 24, 2005 (70 FR 3398). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA'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 collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Customer Request for Information and Order Forms.

OMB number: 3095–0047.

Agency form number: NA Form 14116.

Type of review: Regular.

Affected public: Individuals and households.

Estimated number of respondents: 36,000.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3,000 hours.

Abstract: This web-based form is completed by members of the public who wish to either request printed order forms for copies of genealogical records or to obtain information about NARA's archival holdings or services. Customers who request printed forms indicate the type and quantity of form wanted. Those who need information about NARA's archival holdings choose a subject heading to help describe their request. The form entails no burden other than that necessary to identify the customer, the date, the customer's address, and the nature of the request. This information is used only to facilitate answering the request and is not retained after the request is completed. The information is not used for any subsequent purpose.

Dated: May 5, 2005.

Shelly L. Myers,

Deputy Chief Information Officer.

[FR Doc. 05–9429 Filed 5–11–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meetings (Teleconference)

AGENCY: National Council on Disability (NCD).

TIME AND DATE: 2 p.m. E.D.T., June 1, 2005.

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

STATUS: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the call.

AGENDA: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Analyst, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; (202) 272–2004 (voice), (202) 272–2074 (TTY), (202) 272–2022 (fax), *ghawkins@ncd.gov*.

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: May 5, 2005.

Ethel D. Briggs,

Executive Director.

[FR Doc. 05–9474 Filed 5–11–05; 8:45 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: 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 52, "Early Site Permits (ESP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion and every 10 to 20 years for applications for renewal.

5. Who will be required or asked to report: Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. An estimate of the number of annual responses: 5.

7. The estimated number of annual respondents: 3 (2 early site permit applicants, 2 combined license applicants, and 4 design certification applicants are expected over a 3 year period.)

8. An estimate of the total number of hours needed annually to complete the requirement or request: 185,181 hours (37,036 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, standard design approvals, and

pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of those approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information from the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, combined licenses, and manufacturing licenses for nuclear power plants.

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 June 13, 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 (3150–0151), 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 5th day of May, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–2340 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–45; EA–05–085]

In the Matter of Duke Energy Corporation; Catawba Nuclear Station; Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for implementation of additional security measures associated with access authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Catawba Nuclear Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Duke Energy Corporation (Duke Energy) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) Part 50 and 10 CFR Part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Duke Energy to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that Duke Energy is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Duke Energy's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in light of the common defense and security matters described above, the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered*, effective immediately, that your general license is modified as follows:

A. Duke Energy shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the Duke Energy's security plan. Duke Energy shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than October 31, 2005, with the exception of the additional security measures B.4, which shall be implemented no later than May 2, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. Duke Energy shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause Duke Energy to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Duke Energy's justification for seeking relief from or variation of any specific requirement.

2. If Duke Energy considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Duke Energy must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Duke Energy must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C.1. Duke Energy shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. Duke Energy shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Duke Energy's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Duke Energy of good cause.

IV

In accordance with 10 CFR 2.202, Duke Energy must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region II at 61 Forsyth Street SW., Suite 23T85, Atlanta, GA 30303–8931; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Duke Energy requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Duke Energy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Duke Energy may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is

not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2347 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–05–084]

In the Matter of Duke Energy Corporation, Catawba Nuclear Station, Independent Spent Fuel Storage Installation, Order Modifying License (Effective Immediately)

ACTION: Issuance of Order for Implementation of Interim Safeguards and Security Compensatory Measures.

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Catawba Nuclear Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

Duke Energy Corporation (Duke Energy) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR Part 50, and 10 CFR Part 72. This Order is being issued to Duke Energy who has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Duke Energy to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on Duke Energy who has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at Duke Energy's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. Duke Energy's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in light of the common defense and security matters described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, it is hereby ordered, effective immediately, that your general license is modified as follows:

A. Duke Energy shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. Duke Energy shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before October 31, 2005, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. Duke Energy shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If Duke Energy considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Duke Energy must notify the Commission, within twenty (20) days of this Order, of

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Duke Energy must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. Duke Energy shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Duke Energy shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Duke Energy's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by Duke Energy of good cause.

In accordance with 10 CFR 2.202, Duke Energy must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II at 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303–8931; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Duke Energy requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). If a hearing is requested by Duke Energy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Duke Energy may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2348 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC, Monticello Nuclear Generating Plant; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR–22 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License No. DPR–22, which authorizes the Nuclear Management Company, LLC, to operate the Monticello Nuclear Generating Plant at 1775 megawatts thermal. The renewed license would authorize the applicant to operate the Monticello Nuclear Generating Plant for an additional 20 years beyond the period specified in the current license. The current operating license for the Monticello Nuclear Generating Plant expires on September 8, 2010.

The Commission's staff has received an application dated March 16, 2005, from Nuclear Management Company, LLC, pursuant to 10 CFR part 54, to renew Operating License No. DPR–22 for Monticello Nuclear Generating Plant. A Notice of Receipt and Availability of the license renewal application, "Nuclear Management Company, LLC; Notice of Receipt and Availability of Application for Renewal of Monticello Nuclear Generating Plant Facility, Operating License No. DPR–22, for an Additional 20-Year Period," was published in the **Federal Register** on April 6, 2005 (70 FR 17482).

The Commission's staff has determined that Nuclear Management Company, LLC has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket No. 50–263 for Operating License No. DPR–22 will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict

whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** Notice, the requestor/petitioner may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at *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's PDR reference staff at 1–800–397–4209, or by e-mail at *pdr@nrc.gov*. If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups and all like subject-matters shall be grouped together:

1. Technical—primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the Monticello Nuclear Generating Plant safety analysis for the application (including issues related to emergency planning and physical security to the extent that such matters are discussed or referenced in the application).

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852; Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the applicant. Attorney for the Applicant: Jonathan Rogoff, Esq., Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for Monticello Nuclear Generating Plant, are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html* on the NRC's Web site while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML050880237. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The staff has verified that a copy of the license renewal application is also available to local residents near the Monticello Nuclear Generating Plant, at the Monticello Public Library, 200 West 6th Street, Monticello, MN 55362.

Dated at Rockville, Maryland, this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2341 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; License No. SNM–2511; EA–05–089]

In the Matter of Pacific Gas and Electric Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of additional security measures associated with access authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I. Pacific Gas and Electric (PG&E) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and title 10 of the Code of Federal Regulations (10 CFR) part 50 and 10 CFR part 72. Commission regulations at 10 CFR 72.184 require PG&E to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II. On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment

1[1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that PG&E is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, PG&E's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in light of the common defense and security matters described above, the public health, safety, and interest require that this Order be immediately effective.

III. Accordingly, pursuant to sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, it is hereby ordered, effective immediately, that your general license is modified as follows:

A. PG&E shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the PG&E's security plan. PG&E shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than October 31, 2005, with the exception of the additional security measures B.4, which shall be implemented no later than May 2, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. PG&E shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause PG&E to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide PG&E's justification for seeking relief from or variation of any specific requirement.

2. If PG&E considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, PG&E must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, PG&E must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C.1. PG&E shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. PG&E shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

PG&E's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by PG&E of good cause.

IV. In accordance with 10 CFR 2.202, PG&E must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the PG&E requests a

[1] Attachment 1 contains Safeguards Information and will not be released to the public.

hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by PG&E or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PG&E may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 5th day of May 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2342 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; License No. SNM–2511; EA–05–088]

Pacific Gas and Electric, Diablo Canyon Nuclear Power Plant, Independent Spent FUEL Storage Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of interim safeguards and security compensatory measures.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I. Pacific Gas and Electric (PG&E or the Licensee) holds a site-specific license issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and 10 CFR Part 72. This Order is being issued to PG&E who has identified near term plans to store spent fuel in an ISFSI under the site specific license provisions of 10 CFR Part 72. The Commission regulations at 10 CFR 72.184(b) require the licensee to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR Part 73.

II. On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by the Licensee as prudent, interim measures to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on PG&E who has indicated near term plans to store spent fuel in an ISFSI under their site-specific license issued under the provisions of 10 CFR Part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at PG&E's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that the licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. PG&E's License No. SNM–2511 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters described above, the public health, safety and interest require that this Order be immediately effective.

III. Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 72 and 73, *it is hereby ordered*, effective immediately, that the license identified in this order is modified as follows:

A. PG&E shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. PG&E shall immediately start implementation of the requirements in Attachment 1 to the Order and shall

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

complete implementation before October 31, 2005, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. PG&E shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide licensee's justification for seeking relief from or variation of any specific requirement.

2. If PG&E considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe storage of spent fuel, PG&E must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the PG&E must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. PG&E shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. PG&E shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

PG&E's response to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV. In accordance with 10 CFR 2.202, PG&E must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Enforcement at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than PG&E requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), PG&E may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 5th day of May 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2344 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–387 and 50–388]

Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–14 and NPF–22, issued to PPL Susquehanna, LLC (PPL, the licensee), for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Berwick, Pennsylvania.

The proposed amendment would revise the Technical Specification (TS) 3.8.4, "DC Sources—Operating," to address new required actions for the condition in which a 125 volt direct current (VDC) charger is taken out of service for the purposes of a special inspection and related activities. The proposed changes would be in effect

until the special inspection and related activities are completed on each of the 125 VDC Class 1E battery chargers but no later than 60 days following the issuance of the Unit 1 and 2 amendments. Specifically, required Action A.2.1 would require that surveillance requirement 3.8.6.1 will be performed within 2 hours and once-per-12 hours thereafter; required Action A.2.2 would restrict the restoration time for the inoperable electrical power subsystem to 36 hours.

The exigent amendment request is being made because of the desire to verify, on an expedited basis, that the Unit 1 125 VDC battery chargers are not degraded such that a failure could occur as was experienced on Unit 2 on April 10, 2005. The current TS requirements do not afford enough time to maintain 100% power operation and perform the desired inspections and related activities. The Unit 2 TSs are being requested as a contingency should it be necessary to perform further work on the Unit 2 125 VDC battery chargers as a result of the ongoing Unit 2 125 VDC cause evaluation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes affect Technical Specification (TS) 3.8.4 for "DC Sources—Operating." The proposed changes add new Required Actions for Unit 1 and Unit 2 to specifically address a Class 1E 125 VDC electrical power subsystem that has been taken out of service to perform special inspection and related activities. These changes rely upon the capability of providing the battery charger function by an alternate means (*e.g.*, a 125 [volt direct current] VDC portable battery charger) to justify the proposed completion times. The DC electrical power systems, including associated battery chargers, are not initiators to any accident sequence analyzed in the Final Safety Analysis Report (FSAR). Operation in accordance with the proposed TS ensures that the DC electrical power systems are capable of performing their functions as described in the FSAR. Therefore, the mitigative functions supported by the DC Power Systems will continue to provide the protection assumed by the analysis.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes involve revising TS 3.8.4 "DC Sources—Operating," for the DC electrical power systems. These changes rely upon the capability of providing the battery charger function by an alternate means to justify the proposed completion times when a normal battery charger is taken out of service to perform special inspections and related activities. The DC electrical power systems, which include the associated battery chargers, are not initiators to any accident sequence. Rather, the DC electrical power systems are used to supply equipment used to mitigate an accident. These mitigative functions, supported by the DC electrical power systems, provide the protection assumed by the safety analysis described in the FSAR. The portable battery charger will be connected to the Class 1E 125 VDC subsystem using a double isolation method. Therefore, there are no new types of failures or new or different kinds of accidents or transients that could be created by these changes.

Based on the above, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes do not adversely affect operation of any plant equipment. These changes do not result in a change to the setpoints at which protective actions are initiated. Sufficient DC electrical system capacity is ensured to support operation of mitigation equipment. The equipment fed by the DC electrical sources will continue to be provided adequate power to safety-related loads in accordance with the safety analysis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309,

which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(I)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated April 27, 2005, as supplemented by letter dated May 4, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.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, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of May 2005.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2339 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–48; EA–05–087]

In the Matter of PSEG Nuclear LLC, Hope Creek and Salem Generating Stations; Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for implementation of additional security measures associated with access authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate,

Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Hope Creek and Salem Generating Stations Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

PSEG Nuclear LLC (PSEG) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) Part 50 and 10 CFR Part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require PSEG to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that PSEG is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, PSEG's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in light of the common defense and security matters described above, the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered*, effective immediately, that your general license is modified as follows:

A. PSEG shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the PSEG's security plan. PSEG shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than October 31, 2005, with the exception of the additional security measures B.4, which shall be implemented no later than May 2, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. PSEG shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause PSEG to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide PSEG's justification for seeking relief from or variation of any specific requirement.

2. If PSEG considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, PSEG must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

approach is appropriate, PSEG must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C.1. PSEG shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. PSEG shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

PSEG's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by PSEG of good cause.

IV

In accordance with 10 CFR 2.202, PSEG must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I at 475 Allendale Road, King of Prussia, PA 19406; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the PSEG requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by PSEG or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PSEG may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2345 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–48; EA–05–086]

In the Matter of PSEG Nuclear LLC, Hope Creek and Salem Generating Stations; Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for implementation of interim safeguards and security compensatory measures.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Hope Creek and Salem Generating Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

PSEG Nuclear LLC (PSEG) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR Part 50, and 10 CFR Part 72. This Order is being issued to PSEG who has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require PSEG to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on PSEG who has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at PSEG's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. PSEG's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in light of the common defense and security matters described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103; 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered,* effective immediately, that your general license is modified as follows:

A. PSEG shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. PSEG shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before October 31, 2005, or the first day spent fuel is initially placed in the ISFSI, whichever is later.

B.1. PSEG shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If PSEG considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, PSEG must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, PSEG must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. PSEG shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. PSEG shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

PSEG's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by PSEG of good cause.

IV

In accordance with 10 CFR 2.202, PSEG must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I at 475 Allendale Road, King of Prussia, PA 19406; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than PSEG requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by PSEG or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), PSEG may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2346 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Week of May 9, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 9, 2005

Thursday, May 12, 2005,

10:45 p.m.—Affirmation Session (Public Meeting)

a. Final Rule to Amend 10 CFR Part 110, "Export and Import of Nuclear Equipment and Materials; Security Policies".

b. USEC Inc. (American Centrifuge Plant) Petitioners' Standing to Intervene.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

Additional Information:

By a vote of 5–0 on May 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of USEC, Inc. (American Centrifuge Plant) Petitioners' Standing to Intervene" be held May 12, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: 301–4152100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: May 9, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–9571 Filed 5–10–05; 11:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft Revision 1 of Regulatory Guide 3.71, entitled "Nuclear Criticality Safety Standards for Fuels and Material Facilities," is temporarily identified by its task number, DG–3023, which should be mentioned in all related correspondence. Like its predecessor, the proposed revision describes methods that the NRC staff finds acceptable for complying with the NRC's regulations in Title 10, parts 70 and 76, of the Code of Federal Regulations (10 CFR parts 70 and 76).

In 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," Section 70.20, "General License To Own Special Nuclear Material," defines a specific license to acquire, deliver, receive, possess, use, transfer, import, or export special nuclear material. According to 10 CFR 70.22, "Contents of Applications," each application for such a license must contain proposed procedures to avoid nuclear criticality accidents. In 10 CFR Part 76, "Certification of Gaseous Diffusion

Plants," Section 76.87, "Technical Safety Requirements," states that the technical safety requirements should reference procedures and equipment that are applicable to criticality prevention.

The NRC initially issued Regulatory Guide 3.71 in 1998 to provide guidance concerning procedures that the staff considered acceptable for complying with these portions of the NRC's regulations. Toward that end, the original guide endorsed specific nuclear criticality safety standards developed by the American Nuclear Society's Standards Subcommittee 8 (ANS–8), "Operations with Fissionable Materials Outside Reactors." Those national standards provide guidance, criteria, and best practices for use in preventing and mitigating criticality accidents during operations that involve handling, processing, storing, and/or transporting special nuclear material at fuel and material facilities. The original guide also took exceptions to certain portions of individual ANS–8 standards. In addition, the original guide consolidated and replaced a number of earlier NRC regulatory guides, thereby providing all of the relevant guidance in a single document.

Since that time, several ANS–8 nuclear criticality safety standards have been added, reaffirmed, revised, or withdrawn. Consequently, the NRC staff has decided to update this guide to clarify which standards the agency endorses and to clearly state exceptions to individual standards. This proposed revision does not change any of the guidance provided in Regulatory Guide 3.71; rather, it provides guidance concerning changes that have occurred since the NRC published the original guide in 1998.

The NRC staff is soliciting comments on Draft Regulatory Guide DG–3023. Comments may be accompanied by relevant information or supporting data. Please mention DG–3023 in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–3023 may be directed to H.D. Felsher, at (301) 415–5521 or via e-mail to *HDF@nrc.gov*.

Comments would be most helpful if received by June 20, 2005. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of Draft Regulatory Guide DG–3023 are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML050390450. Note, however, that the NRC has temporarily limited public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548; and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 26th day of April, 2005.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. E5–2349 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 18, 2005, 10 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) Vacancy Announcement No. 05–23—Information Assurance Analyst Position in the Bureau of Information Services, Information Resources Management Center.

(2) Discussion on the Hiring Plan, Considering All Positions (Field Service and Others).

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: May 9, 2005.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 05–9557 Filed 5–10–05; 10:21 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51659; File No. SR–FICC–2004–22]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To Establishing a Sponsored Membership Program

May 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] notice is hereby given that on November 12, 2004, the Fixed Income Clearing Corporation ("FICC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") and on February 28, 2005, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. 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 proposed rule change would establish a sponsoring member-sponsored member relationship in FICC's rules whereby certain existing netting members would be permitted to sponsor certain buy-side entities into membership.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

In an effort to have buy-side entities, such as registered investment companies, become members of FICC's Government Securities Division ("GSD"), FICC is proposing to add a new Rule 3A to GSD's rules that would govern the rights and obligations of sponsoring members and sponsored members and to make conforming changes to existing rules to accommodate the introduction of these new membership categories.

GSD will initially permit only bank netting members to apply to become sponsoring members.[2] In order to be eligible to apply to become a sponsoring member, a bank netting member will have to meet more stringent minimum financial requirements than those required for GSD netting membership. Specifically, the sponsoring member will have to have a level of equity capital of at least $5 billion and will have to satisfy the ratios established by the Federal Deposit Insurance Corporation for being "well-capitalized." If the sponsoring member has a bank holding company that is registered under the Bank Holding Company Act of 1956, then the bank holding company will also have to be "well-capitalized" under the relevant regulations of the Board of Governors of the Federal Reserve System. These financial criteria will also be the sponsoring member's continuing minimum financial requirements that it will have to be maintained on an on-going basis. Applications for sponsoring membership will be considered by FICC's Membership and Risk Management Committee.[3]

To become a sponsored member, GSD will permit only entities that are (i) registered investment companies under the Investment Company Act of 1940 and (ii) qualified institutional buyers under Rule 144A of the Securities Act of 1933.[4] In addition, an entity will only be able to become a sponsored member if there is a sponsoring member willing to sponsor the entity into membership. FICC will require a sponsoring member to represent in writing that each entity it wishes to make its sponsored member meets these requirements. Thereafter, sponsoring members will have to make these representations on an on-going basis as well. GSD management will approve entities to become sponsored members.[5]

The risk management of this arrangement would occur primarily at the sponsoring member level. FICC believes that this obviates the need for it to conduct financial reviews and on-going financial surveillance of sponsored members as it performs for netting members and as it will perform for sponsoring members.

Since a sponsoring member would act as the processing agent for its sponsored members, FICC would interact solely with the sponsoring member for operational purposes. The sponsoring member would have to establish an omnibus account for all of its sponsored members' activity. The omnibus account would be in addition to the sponsoring member's regular netting account. FICC would permit the sponsoring member to submit sponsored member activity on a locked-in basis if it chooses to do so.[6]

FICC would provide its settlement guaranty to each sponsored member with respect to its respective net settlement positions (*i.e.*, for clearing fund calculation, each sponsored member's trading activity is treated separately). For operational and securities clearance purposes, however, all of the activity in the omnibus account would be netted as if it were the activity of one netting member. Therefore, the omnibus account would have only one net settlement obligation per CUSIP on a daily basis as an operational matter.[7] The same would be true with respect to funds-only settlement.[8]

The margin requirement of each sponsored member whose activity is submitted to the omnibus account would be calculated in the same manner as is done for a netting member except that FICC would compute the required clearing fund deposit for each sponsored member on a standalone basis. FICC then would add those figures to two additional figures that would be calculated at the omnibus account level (for adjusted funds-only settlement amounts and fail net settlement positions) to come to a total clearing fund requirement for the omnibus account. For risk management purposes, FICC would not net the resulting clearing fund calculations of each sponsored member within the omnibus account with those of other sponsored members in the omnibus account.[9]

FICC has learned that the custodial banks that are likely to be interested in becoming sponsoring members generally collateralize their custody clients (*i.e.*, the potential sponsored members) at 102 percent for U.S. Treasury repurchase agreements.[10] Under the current GSD clearing fund formula, this would cause a sponsoring member to pay an additional 4 percent of its overall transactional volume with sponsored members in the form of clearing fund margin, which may potentially amount to hundreds of millions of dollars of additional clearing fund obligations.[11] FICC believes that

[1] 15 U.S.C. 78s(b)(1).

[2] FICC understands that submission of a rule filing will be necessary in order to expand the types of entities that may be sponsoring members.

[3] Proposed Rule 3A, Section 2.

[4] FICC understands that submission of a rule filing will be necessary in order to expand the types of entities that may be sponsored members.

[5] Proposed Rule 3A, Sections 2(d) and 3.

[6] Proposed Rule 3A, Sections 5 and 6.

[7] Proposed Rule 3A, Sections 7 and 8.

[8] Proposed Rule 3A, Section 9.

[9] Proposed Rule 3A, Section 10.

[10] This means that when a custody client wishes to engage in a reverse repo transaction by lending money (for example, $100), it will generally require collateral in excess of the money loaned (for example, $102).

[11] An example will illustrate why this occurs under the clearing fund formula. Assume that the start leg of the repo transaction between the

this potential adverse impact on a sponsoring member is unnecessary because these additional funds payments are pass-through amounts and do not represent risk to FICC or its members. Therefore, FICC proposes to amend the clearing fund rule to adjust for this funds-only settlement component when calculating the clearing fund requirements for the sponsored members, the omnibus account, and the sponsoring member's regular netting account. FICC would reserve the right to not adjust the funds-only settlement component under extraordinary circumstances.

Each sponsored member would be principally liable for satisfying its securities and funds-only settlement obligations. For operational and administrative purposes, FICC would interact with the sponsoring member as agent for the sponsored members for day-to-day satisfaction of these obligations.[12]

While the sponsored members would be principally liable for their settlement obligations, the sponsoring member would be required to provide a guaranty to FICC with respect to such obligations. This means that in the event one or more sponsored members do not satisfy their settlement obligations, FICC would be able to invoke the guaranty provided by the sponsoring member.[13]

Sponsored members would not be liable for any loss allocation obligations. To the extent that a "remaining loss" (as defined in the GSD's rules) arises in connection with "direct transactions" (as defined in the GSD's rules) between the sponsoring member and its sponsored members (*i.e.*, the sponsoring member is the insolvent party), the sponsored members would not be responsible for or considered in the calculation of the loss allocation obligations. Such obligations would be the obligation of the other netting members that had direct transactions with the sponsoring member in its capacity as a netting member. To the extent there is an allocation other than for direct transactions between the sponsoring member and its sponsored members, the sponsored members would be counted as if they were obligated to pay the loss allocation amounts but it will be the sponsoring member's obligation to pay such amounts.[14]

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules thereunder because it would enable more entities to take advantage of FICC's services thereby promoting the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–FICC–2004–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://ficc.com/gov/gov. docs.jsp?NS-query=*. 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–FICC–2004–22 and should be submitted on or before June 2, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–2352 Filed 5–11–05; 8:45 am]

BILLING CODE 8010–01–P

sponsoring member and the sponsored member calls for the sponsored member to lend $100 and receive $102 in securities. During the next day, the close leg of the repo transaction to which FICC has become counterparty will call for the sponsored member to send the collateral back to FICC, and FICC, which settles at market value, will pay $102 in funds. This requires an adjustment to occur for funds-only settlement purposes: FICC will debit the sponsored member $2 and will, in turn, credit the sponsoring member's regular netting account $2. These funds-only settlement amount payments are referred to as "transaction adjustment payments" in the GSD's rules. Because one component of the clearing fund requires inclusion of the absolute value of the funds-only settlement amounts (*i.e.*, regardless of whether they are debits or credits), the transaction adjustment payments will artificially inflate the clearing fund requirements related to both the sponsored member omnibus account and the sponsoring member's regular netting account.

[12] Proposed Rule 3A, Sections 8 and 9.

[13] Proposed definition of "Sponsoring Member Guaranty" and proposed Rule 3A, Section 2.

[14] Proposed Rule 3A, Section12.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51663; File No. SR–ISE–2004–40]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to Procedures for the Allocation of Options on Index-Based Products

May 6, 2005.

I. Introduction

On December 14, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 802 to add criteria for allocating options based on indices and fund shares ("Index-based Products") to Primary Market Makers and Competitive Market Makers. On January 18, 2005, the ISE filed Amendment No. 1 to the proposed rule change.[3] On March 2, 2005, the ISE filed Amendment No. 2 to the proposed rule change.[4] On March 21, 2005, the ISE filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 5, 2005.[6] The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to amend ISE Rule 802 to (a) specify that the ISE's Board or a designated committee of the Board is required to make market maker appointments in the best interest of the Exchange to provide competitive markets, and (b) add criteria for allocating Index-based Products to Primary Market Makers and Competitive Market Makers. Specifically, with respect to the criteria for Index-based Products, the Exchange proposes to require a Primary Market Maker who seeks an allocation of an Index-based Product to provide specific quotation spread and size commitments for the first year of listing. These commitments would remain in effect, unless a change is approved by the ISE Board or a designated committee of the Board upon the request of the Primary Market Maker. In addition, under the proposal, a Primary Market Maker may, but would not be required to, provide commitments regarding marketing or other support with respect to the Index-based Product, including information regarding order flow arrangements with order flow providers. Finally, the ISE represented that the proposed amendments to ISE Rule 802 would apply only to allocation decisions made after the approval of this proposal.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to require that the Board or designated committee make market maker appointments in the best interest of the Exchange and to add criteria for allocating Index-based Products to Primary Market Makers is consistent with Section 6(b)(5) of the Act[9] because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposal should assist the Board or designated committee in making allocation decisions.

With regard to order flow commitments that a Primary Market Maker may make, the Commission believes that the ISE should use this information solely to evaluate existing order flow arrangements between the applicant and order flow providers.[10] The Commission notes that ISE represented that it would not use existing order flow commitments as an indicator of potential future order flow that an applicant may be able to bring to the ISE. In addition, the ISE represented that a future change to, or termination of, any order flow arrangements considered by the ISE during the review process would not be used by the ISE at any point in the future to terminate an allocation or to take remedial action against a Primary Market Maker and that the ISE would not take any remedial action solely because orders subject to any order flow arrangements were not subsequently routed to the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2004–40), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–2350 Filed 5–11–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated January 18, 2005, which replaced the original filing in its entirety ("Amendment No. 1").

[4] *See* Form 19b–4, dated March 2, 2005, which replaced Amendment No. 1 in its entirety ("Amendment No. 2").

[5] *See* Form 19b–4, dated March 21, 2005, which replaced Amendment No. 2 in its entirety ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 51443 (March 29, 2005), 70 FR 17279.

[7] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] The ISE represented that it would use such information solely to evaluate existing order flow arrangements between the applicant and order flow providers and would not use such information as a basis to terminate an allocation or take remedial action against a Primary Market Maker. *See supra* note 6.

The Commission notes that other exchanges made similar representations regarding their use of order flow commitment information, and the Commission has emphasized that order flow commitments may be used solely to evaluate existing order flow arrangements and may not be used as a basis for termination of an allocation or for taking remedial action against a market maker. *See* Securities Exchange Act Release Nos. 49577 (Apr. 19, 2004), 69 FR 22576 (Apr. 26, 2004) (approving File No. SR–CBOE–2004–17); and 51126 (Feb. 2, 2005), 70 FR 6915 (Feb. 9, 2005) (approving File No. SR–Phlx–2004–90).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, Office of Small Business Development Centers, National Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration or interested others. The conference call will take place on Tuesday, May 17, 2005, at 1 p.m. eastern time.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax

(202) 481–0681, e-mail: *Ericka.Fisher@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–9497 Filed 5–11–05; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will take place on Thursday, May 26, 2005, starting at 1 p.m. until 5 p.m. The meeting will be held at Carlson Companies, 701 Carlson Parkway, Minnetonka, Minnesota 55305. The meeting will discuss the National Women's Business Council's agenda and action items for fiscal year 2005, included and not limited to procurement, access to capital, access to training and technical assistance, access to markets and affordable health care.

Anyone wishing to attend and make an oral presentation must contact Katherine Stanley in writing or by fax no later than Monday, May 23, 2005, in order to be put on the agenda. Katherine Stanley, Administrative Officer, U.S. Small Business Administration, National Women's Business Council, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205–3850, fax (202) 481–2101, e-mail: *Katherine.Stanley@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–9496 Filed 5–11–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Public Hearings

AGENCY: U.S. Small Business Administration.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Small Business Administration (SBA) announces that it is holding a series of public hearings throughout the country on the topic of small business size standards and other issues such as the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program. Testimony presented at these hearings will become part of the administrative record for SBA's consideration when the Agency deliberates on approaches to simplify and restructure size standards and other changes to make size standards easier to understand and use.

DATES: The Public Hearings Section below specifies the dates and locations of the public hearings. Attendees must pre-register 5 business days prior to the scheduled hearing date.

ADDRESSES: Parties interested in testifying at or attending a public hearing must pre-register by providing a request to SBA's Office of Size Standards at *Hearings.sizestandards@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, at (202) 205–6618 or at *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 19, 2004, SBA published a proposed rule to simplify and restructure its small business size standards by establishing most size standards based on the number of employees of a business concern and by significantly reducing the number of different size standard levels (69 FR 13130). Based on concerns expressed by a large number of commenters, SBA decided to withdraw that proposal on July 1, 2004 (69 FR 39874). However, a large number of commenters also supported the proposal in general or supported certain aspects of the proposed changes. As a result, SBA decided to reconsider its initial approach to simplifying and restructuring size standards and seek public input on the general issue of size standards, including how best to simplify and restructure size standards.

SBA is pursuing two actions to engage the public in providing its views of SBA's size standards. First, SBA published an Advance Notice of Proposed Rulemaking (ANPRM) on December 3, 2004, requesting comment on a variety of size standards issues (69 FR 70197). Most of those issues were presented in the comments SBA had received in response to the March 19, 2004, proposed rule, but were not part of the proposed changes. SBA believes that it is beneficial to its evaluation of the comments raising those issues to provide the public at large with an opportunity to consider and comment upon them. SBA also included several issues in the ANPRM that it had under consideration as separate policy changes apart from the simplification and restructuring proposal. Specifically, the issues presented in the ANPRM consist of: (1) The approach to simplify size standards, (2) the calculation of number of employees (including how SBA defines an employee for size purposes), (3) the use of receipts-based size standards, (4) the designation of size standards for Federal procurements, (5) the establishment of separate and distinct size standards for use solely in Federal procurement programs, (6) the establishment of tiered size standards, (7) the simplification of the affiliation regulations, (8) the simplification of the small business joint venture eligibility regulations, (9) the possible grandfathering of small business eligibility, (10) the impact of SBA size standards on the regulations of other Federal agencies, and (11) the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program and the effect such participation would have on the Program. The ANPRM comment period closed on April 3, 2005.

Second, because of the significance of the size standards initiative and importance of the other issues being considered, SBA decided to conduct a series of public hearings around the country to provide interested parties with an opportunity to meet with SBA officials and discuss their views on the issues. SBA considers the public hearings a valuable component of its deliberations. While the comments received to the ANPRM are greatly assisting SBA with its deliberations, the public hearings allow for a constructive dialogue with the public on these issues enabling SBA to more fully comprehend the views of the public. This notice provides information on the purpose, format, scheduling, and registration for the public hearings.

II. Public Hearings

A panel of SBA officials will preside over 11 formal public hearings. The purpose of the hearings is to obtain the views of SBA's stakeholders on approaches to simplify and restructure size standards, to identify other policy changes which may make size standards easier to understand and use, and to obtain stakeholder views on the other issues being considered such as the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program. Oral and written testimony will be become part of the hearing record for SBA's consideration. SBA will analyze the hearing testimony along with the comments it received to the March 19, 2004, proposed rule and the December 3, 2004, ANPRM in formulating a new proposal regarding approaches

simplifying and restructuring size standards, other policies to make size standards easier to use and understand, and the other issues being considered.

Individuals testifying before SBA will be limited to a 5 minute oral presentation. SBA officials may ask questions of a presenter to clarify or further explain the testimony. Since the purpose of the hearings is to assist SBA with gathering information to potentially develop new proposals, SBA will not respond as to whether it agrees with the views or position of the presenter's testimony.

SBA requests that the testimony focus on the issues discussed in the ANPRM, the general issue of simplifying size standards, other improvements to size standards, or any of the other issues identified such as the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program. SBA encourages presenters to review the ANPRM for a further discussion of the issues. SBA requests that the presenters do not raise issues pertaining to other aspects of SBA's small business programs. Issues not raised in the ANPRM are more properly suited for a different forum than these hearings. Also, the hearings are not intended for the public to petition for a change to a specific size standard. Parties interested in SBA considering a change to a particular industry size standard may submit a request to SBA as described in the small business regulations at 13 CFR 121.102.

Oral testimony will be recorded and transcribed. Presenters shall provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. SBA encourages presenters to provide SBA with an electronic or digitized copy of their written testimony and supplemental information.

III. Hearing Schedule

Location	Address	Hearing date	Registration closing date
Seattle, WA	Small Business Administration, 1200 6th Ave., Suite 1700, Seattle, Washington 98101.	June 2, 2005	May 26, 2005.
St. Louis, MO	St. Louis Community College at Florissant Valley, Multi-Purpose Room, 3400 Pershall Road, St. Louis, MO 63135–1499.	June 2, 2005	May 26, 2005.
Portland, ME	City Hall, 389 Congress Street, Portland, ME 04101	June 7, 2005	May 31, 2005.
Atlanta, GA	Atlanta Fulton County Public Library—3rd Floor Meeting Room, 1 Margaret Mitchell Square, Atlanta, GA 30303.	June 9, 2005	June 2, 2005.
Denver, CO	U.S. Federal Building, 1961 Stout Street, Room 239, Denver, Colorado 80202.	June 14, 2005	June 7, 2005.
New York, NY	Jacob Javitz Federal Building, 6th Floor Conference Room B, 26 Federal Plaza, New York, NY 10278.	June 16, 2005	June 9, 2005.
Washington, DC	Small Business Administration, 409 Third Street, SW., Eisenhower Conference Room, Washington, DC 20416.	June 17, 2005	June 10, 2005.
Chicago, IL	Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd., Morrison Room, Chicago, IL 60604.	June 20, 2005	June 13, 2005.
Dallas, TX	Bill J. Priest Institute, 1402 Corinth Ave., Dallas, TX 75215	June 22, 2005	June 15, 2005.
San Francisco, CA	San Francisco District Office, 455 Market Street, 6th Floor, San Francisco, CA 94105–2420.	June 28, 2005	June 21, 2005.
Los Angeles, CA	Small Business Administration, Los Angeles District Office, 330 North Brand, Suite 1200, Glendale, CA 91203.	June 29, 2005	June 22, 2005.

Each hearing will be held for one day. The hearings will begin at 8:30 a.m. and end at 5:30 p.m., with a break from 12:30 p.m. to 1:30 p.m., except for the Atlanta size standards hearing. The Atlanta size standards hearing will start at 9:30 a.m. and end at 6:30 p.m. SBA will adjourn the hearing early if all those registered have provided their testimony.

IV. Registration

Anyone interested in testifying must pre-register in advance with SBA. Registration requests must be received by SBA at least 5 business days prior to the scheduled hearing date. Please contact the Office of Size Standards in writing at *Hearings.sizestandards@sba.gov*. Please include the following information relating to the person requesting to testify: Name, Title, Organization affiliation, Address, Telephone number, E-mail address, Fax number, and which hearing the presenter wants to attend to provide testimony. SBA will attempt to accommodate all interested parties that wish to present testimony. However, time considerations limit the total number of presenters at each hearing. If the number of individuals seek to testify at a specific hearing exceeds the number permitted due to time limitations, SBA will ask if any interested parties are able to attend a different hearing, and if that is not possible, will ask those requesting to testify last in time to submit their concerns in writing. To afford all interested parties an opportunity to participate in the hearings, an individual can register for only one hearing location.

Parties that plan to attend the hearing but not testify must also pre-register. For those parties, please indicate in your registration that you will be attending the hearing but not making an oral presentation.

SBA will confirm in writing the registration of presenters and attendees for the hearings. Participants will be notified of any changes regarding the schedule or conduct of the meeting. Information concerning the public hearings will be available on SBA's Internet site at *http://www.sba.gov/size*.

Dated: May 5, 2005.

Allegra F. McCullough,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 05–9428 Filed 5–11–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5076]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Afghanistan School Administrator Project

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/S/X–05–02.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: June 6, 2005.

Executive Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Afghanistan School Administrator Project (ASAP). The goal of the project is to enhance the educational and professional skills of the participants, including their leadership potential. While in the U.S. the participants will gain knowledge about the United States through daily interactions with Americans as well as improve their skills in school administration. The project will bring three different groups of 10–12 participants to the U.S. for a six-to-eight week program between late winter 2006 and spring 2007. The participants will be women who serve as school principals or assistant principals in Afghan schools. The administrators will receive an overview of U.S. education and education philosophy, have a series of workshops on school administration, visit U.S. schools, receive basic English instruction, and receive a computer laptop with training as needed. The grantee organization will assist the participants in conducting follow-on workshops in Afghanistan in cooperation with the Ministry of Education. Upon return to Afghanistan the alumnae will be eligible to compete in a small grants competition. The project will be conducted in three phases outlined below. Bureau funding of up to $700,000 is available to support one grant.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Bureau of Educational and Cultural Affairs seeks to assist in the on-going efforts of the government of Afghanistan to deliver education to its children by providing a project that targets women educators who are school principals or assistant principals. Concentrating on women school administrators will enhance the schooling of Afghan girls, who still lag behind Afghan boys in educational opportunities, since most women school administrators are at schools that are predominately serving Afghan girls. The goal of this project is to enhance the educational and professional skills of the participants, including their leadership potential. This project will build on the success of the Bureau's Afghanistan Teacher Education Project (ATEP) by continuing to target women educators in Afghanistan, but focus instead on school administrators. By the Afghanistan Teacher Education Project's conclusion a total of 61 basic education and English language teachers, and 24 school principals will have participated in U.S.-based training.

Overview: All programming and logistics including design and implementation of the academic, cultural, and administrative components will be the responsibility of the grantee institution. These responsibilities include designing and implementing a three-phased academic component, which will take place in Afghanistan and the U.S. The first component is Afghan-based and should include the grantee's assessment of the relevant needs of the school principals within the Afghan education system, the recruitment of 10–12 school administrators per group, and a pre-departure orientation to prepare the participants for their program in the U.S. The second component consists of the design of a six-to-eight week U.S.-based program that provides participants with exposure to U.S. education curricula, train the trainer skills, educational materials and technology, leadership skills, and education policy topics that would benefit school administrators in Afghanistan, a cultural component that complements and reinforces material covered in the academic component, homestays, and a visit of no less than four days in Washington, DC. The third component, which will take place after the participants return home, consists of follow-on training in Afghanistan for the participants and other administrators or teachers in cooperation with the Ministry of Education and Public Affairs Section (PAS) of the U.S. Embassy in Kabul. The grantee organization will also design and implement a small grants program so that alumnae of the ASAP Project and the ATEP Project will be able to purchase essential materials for their schools.

The grantee organization will be expected to arrange and budget for housing, meals, international and U.S. transportation, allowances for incidental expenses, books, laptop computer and printer, alumni grants, and excess baggage during all three components.

Responsibilities for this project include:

1. Afghan-Based Activities

A. Needs Assessment: Proposals should describe how, upon receipt of the grant the grantee institution will carry out a needs assessment in Afghanistan to determine which topics school administrators, appropriate Afghan education officials, and PAS-Kabul identify as most relevant to Afghan education, and then develop the project around those priorities. As part of the assessment, the grantee should consult with the Bureau and Embassy Kabul about the feasibility of and timeline for conducting the project as outlined in the applicant's proposal.

B. Recruitment and Selection: The grant recipient will be responsible for identifying 30–36 Afghan women participants for the U.S. phase of the project. The participants should be school principals or assistant principals with a strong commitment to the rebuilding of the education system of Afghanistan. The selected participants should have demonstrated their commitment in recent years by serving Afghanistan's children within the formal education system. The recruitment methodology and specific criteria for participant selection should be outlined in the proposal. However, please note that participants should not be required to speak English. The grantee organization will be responsible for the selection process, with the understanding that the Bureau and PAS-Kabul must be consulted during the recruitment and selection process.

A Kabul-based office or partner organization will be essential in carrying out this project. Applicants should identify in-country (Afghanistan-based) partner organizations and individuals with whom they propose to collaborate, and describe in detail previous cooperative projects undertaken by the organization(s)/individual(s). Specific information about the in-country partner's activities and accomplishments must be included in the section on "Institutional and Language Capacity." Please include letters of project commitment from any in-country partners. A sub-grant agreement and accompanying budget for

activities to be conducted is required if an applicant partners with another organization. Please include this documentation with your proposal submission.

C. Pre-departure Orientation: The grantee organization will conduct a three-day pre-departure orientation in Afghanistan for the participants to prepare them for the project and U.S.-based training and ensure that the expectations of participants are achievable within the objectives of the project.

2. U.S.-Based Academic Workshops

Participants will travel to the U.S. for a six-week training program to enhance their expertise and professional skills as well as their leadership potential. Although the program will reference American examples of education reform, the wide disparity between the American and Afghanistan contexts requires that the focus be on the Afghan education system. Any American examples that are used must have relevance and applicability to the realities of Afghanistan. This project should not be perceived to be an American studies program or a program on concepts of American education, but rather a school administrators project specifically designed for Afghan educators. The approach should be one that provides in-depth content on a few selected themes rather than cursory information on a wide variety of topics. The workshop in the U.S. will upgrade participants' knowledge about educational technology, curriculum and materials development and train-the-trainer skills, while also affording them opportunities to observe student-centered learning. Specific topics might include: establishing coordination among the various components of the education system, turning policy into practice, testing, certification, staff development, community outreach, education technology, parental involvement and student government, etc. In addition, observation of U.S. classrooms and applied practices should be included to inform the Afghan participants about the variety found within the U.S. education system. This will allow the Afghans to interact with the local community and provide Americans the opportunity to experience and learn about the culture of Afghanistan. Orientation sessions must be included for all Afghan and American participants (host families and/or those implementing the academic portion of the program).

3. Afghan-Based Activities Upon Return

A. Follow-On Workshop: The project should also include a follow-on workshop for the participants following their U.S. training, which would be held in Afghanistan, and involve U.S. trainers identified by the grantee organization. The planning and conducting of the workshops should use an Afghan-driven approach. A modest stipend, perhaps $50 per month, could be budgeted for the Afghan principals while the workshop is planned and implemented. In addition, travel, food, and educational materials for all workshop participants should be budgeted for in the proposal. The school principals would be expected to play a central role in developing the Afghan workshop phase, so its design and content should be determined while the participants are in the U.S. phase of the project. The grantee should also consult with the Afghan Ministry of Education on potential participants in the follow-on workshop. Each follow-on workshop should reach out to at least 60 more educators in Afghanistan and provide relevant education materials in Dari (and Pashto if possible) to the participants. At least 180 principals from all three groups should participate in the follow-on phase. The project should be designed so that the sharing of information and training that occurs during the grant period will continue long after the grant concludes.

B. Alumnae Small Grant Program: Approximately $100,000 of the $700,000 budget should be allocated for a potential small grants program that the grantee institution would design and implement. Should funds be available, alumnae of ATEP and ASAP would be eligible to apply for grants of up to $2,000 to purchase materials for their schools or to develop school linkages with the U.S. The grantee institution should establish criteria for the competition and after consultation with ECA, notify eligible participants that such a program is available. A workshop on writing grant requests should be held in Afghanistan or during the U.S. program to help alumnae develop grant-writing skills. Given that the alumnae will write grant proposals in the local languages, the grantee institution will need to provide PAS-Kabul and the Bureau Program Officer with a summary of each proposal in English for final approval.

Timing: The project would preferably be implemented during a time frame that will cause the least disruption to the Afghan education system and the on-going responsibilities of the participants. Concurrence must be obtained from the Bureau and PAS–Kabul on the timing of the project.

Further Information and Guidance: Please review the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY–2005.

Approximate Total Funding: $700,000.

Approximate Number of Awards: 1.

Approximate Average Award: $700,000.

Anticipated Award Date: Pending availability of funds, September 1, 2005.

Anticipated Project Completion Date: June 30, 2007.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Proposals may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

a. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $700,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Office of Global Educational Programs, ECA/A/S/X, Room #349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202 619–4555, *mosleypj@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–05–02 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition. Please specify Bureau Senior Program Officer Mary Lou Johnson-Pizarro and refer to the Funding Opportunity Number ECA/A/S/X–05–02 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. You Are Required To Have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 *Adherence to All Regulations Governing the J Visa.* The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810; FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work

or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: i.e. sustainability, overall program management, staffing, coordination with the Bureau and PAS-Kabul or any other requirements etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. One award will be made and it may not exceed $700,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) International and Domestic Travel
(2) U.S. Ground Transportation
(3) Host Families
(4) Professional Development Seminars/Conference and Debriefing (instruction, materials, logistics)
(5) Participant Maintenance (6–8 weeks)
(6) Cultural Activities
(7) Book Allowance/Shipping
(8) Laptop Computer and Printer
(9) Grantee administrative costs
(10) Interpretation and Translation Costs
(11) Small alumni grants

The Bureau will consider funding project activities in addition to those specifically listed in the RFGP as long as they are not designated unallowable.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: June 6, 2005.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–05–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide

these files electronically to the U.S. Embassy's Public Affairs Section in Kabul for their review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program planning: A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-on activities).

4. Institutional and Language Capacity: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Also, the applicant should indicate the capacity to conduct the program in Dari.

5. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. An illustrative sample can be found in the POGI and should be modified to fit the needs of this project.

6. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of a final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least one week prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Mary Lou Johnson-Pizarro, Office of Global Educational Programs, ECA/A/S/X, Room #349, ECA/A/S/X–05–02, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, phone (202) 401–5969, fax (202) 401–1433, *Johnson-PizarroML@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–05–02.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 5, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–9493 Filed 5–11–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5074]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Educational Advising and Regional Educational Advising Coordinator Services in the East Asia/Pacific Region

Announcement Type: New Cooperative Agreement

Funding Opportunity Number: ECA/A/S/A–06–04.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: Friday, July 8, 2005.

Executive Summary: The Office of Global Educational Programs (ECA/A/S) announces an open competition for Educational Advising Centers and Regional Educational Advising Coordinator (REAC) Services in the East Asia/Pacific region. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to operate advising centers in Hong Kong and Ho Chi Minh City, Vietnam, provide China Country Coordinator services, based in Beijing, for advising in China, and provide REAC services, based in Bangkok, for the East Asia/Pacific region.

The educational advising centers will be part of the network of approximately 450 Department of State-affiliated EducationUSA advising centers worldwide. These centers provide comprehensive and unbiased information to interested students, scholars, and other individuals about study opportunities in the U.S.

The Coordinator for advising in China provides educational information resources and support/networking opportunities for educational advisers throughout China and works closely with the U.S. Embassy in Beijing to coordinate web-based student advising information.

The REAC-hosting organization facilitates the Regional Coordinator's provision of expertise and information in consultation with U,S. embassies and ECA. The REAC supports the network of 120 active U.S. Department of State-affiliated EducationUSA centers in the East Asia/Pacific Region by sharing information, developing outreach modules and supporting educational advisers in promoting U.S. higher education among broad audiences including underserved populations, communicating trends in U.S. education and international/regional exchanges, disseminating the latest developments in educational technology, and providing direct guidance through site visits, internships, training, and workshops in the region.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: U.S. Department of State-affiliated EducationUSA advising centers guide students in their pursuit of educational opportunities in the United States and prepare them for direct exposure to American values, ideas, models, and traditions. They provide up-to-date, unbiased information on the range of accredited U.S. educational institutions and work to build mutual understanding between the United States and other countries through educational exchange.

Department of State-affiliated overseas EducationUSA advising services operate in nearly five hundred locations around the world. An EducationUSA center provides general information about academic opportunities in the U.S., offers group informational sessions and individual advising, and conducts outreach to local institutions. EducationUSA advising centers also provide accurate information and advising assistance on the following topics: The U.S. education system; U.S. colleges, universities, and other higher education institutions; the application process to a U.S. university; majors and fields of study; testing requirements; life in the U.S.; visa application procedures; scholarship programs and financial aid; and pre-departure orientation.

The Regional Educational Advising Coordinator (REAC) hosting organization will be responsible for providing on-site technical assistance and training to EducationUSA centers in the East Asia/Pacific Region (EAP) and for coordinating the establishment of any new EducationUSA centers, as directed by individual embassies in consultation with ECA/A/S/A. The REAC supports U.S. Department of State-affiliated EducationUSA centers located in the following countries and locations: Australia, Brunei, Burma, Cambodia, China, Hong Kong, Fiji, Indonesia, Japan, Korea, Laos, Malaysia, Mongolia, New Zealand, Papua New Guinea, Philippines, Singapore, Taiwan, Thailand and Vietnam. The EAP REAC organization should work impartially with all non-governmental organizations, Fulbright Commissions, Public Affairs Sections located in U.S. embassies, consulates at U.S. embassies, universities, libraries, and other organizations involved in educational advising to enable advisers to provide accurate and timely information on U.S. higher educational opportunities. The REAC must work closely with ECA/A/S/A and with Public Affairs Sections throughout the region to help establish priorities for educational advising.

Should additional funds become available, this grant would be increased by up to $202,000 to fund in-country and sub-regional workshops and site visits, web-site and staff support for China/REAC, and educational advising

outreach to underserved areas and Muslim populations. The increase would also fund Pacific Partner post educational advising outreach and coordination. Pacific Partner posts include Brunei, East Timor, Fiji, Papua New Guinea, the Marshall Islands and Micronesia.

Advising Center Physical Description: The proposal should describe in detail the Hong Kong and Ho Chi Minh City EducationUSA centers' location, facilities (including size and capacity of public spaces), hours of operation, staffing pattern, (including percentage of time each employee will devote to advising activities, a description of each employee's function and responsibilities), a detailed budget for the office, and a listing of services provided by the center. Each month, the EducationUSA center should be able to respond to information inquiries, including individual visits, telephone calls/faxes, and electronic communications. The proposal should also include a description of what methods the center and its headquarters or sponsoring organization will pursue to supplement ECA funding of operating costs.

Advising Center Outreach: EducationUSA advising centers are encouraged to reach diverse audiences by organizing lectures and events outside the center. These outreach activities provide general information about study opportunities in the United States and about additional services and resources offered at the center. Proposals should include a detailed description and schedule of outreach activities for the grant year.

The proposal should include information on the development and use of websites to support educational advising and the diffusion of information on U.S. study.

Advising Center Statistics: EducationUSA centers submit statistics to the EAP Regional Educational Advising Coordinator (REAC) on the number of office visitors. The statistics track visitors to the center, phone calls, faxes, letters, e-mail, and website hits. Centers also respond to requests for statistical analysis and anecdotal information from the REAC and ECA's Educational Information and Resources Branch. The proposal should discuss how the EducationUSA center will meet this requirement.

Advising Center Fund-raising/Cost Defrayment: The proposal should explain the measures taken by the EducationUSA center to generate income and reduce operating costs. U.S. Department of State-affiliated EducationUSA centers must provide a general introduction to U.S. studies and access to basic resources to all interested persons free of charge. To help cover operation costs, the center may charge a fee for specialized services (*e.g.*, in-depth individual advising, workshops to prepare students for U.S. higher education study, or test preparation materials). Fees must be set at reasonable local standards to keep services affordable to the majority of the population. Further examples of cost-defrayment strategies include charging visitors for certification of education documents and charging for printing or photocopying. The proposal should clearly indicate the use planned for savings or income generated through these activities.

Advising Center Coordination/ Communications: The Hong Kong EducationUSA center should help coordinate major events, such as adviser training workshops and accredited U.S. college/university fairs. Coordination with other centers in the EAP region, with Public Affairs offices in the region, and with Fulbright Commissions prevents duplication of efforts and assures U.S. college/university representatives of the opportunity to participate in multiple advising fairs on one trip to the area. All advising events supported by the advising center should be carried out under the banner of EducationUSA with the knowledge of the EAP REAC.

The center participates in appropriate listservs and maintains contact with other centers in EAP and in other regions. The center shares incidental educational research that may be of use to other centers.

Advising Center Professional Standards, Guidelines, and Development: Educational advisers follow the Standards of Ethical Conduct adopted by NAFSA: Association of International Educators. Every year, EducationUSA centers will receive a collection of educational advising reference materials and announcements of training possibilities through ECA's Educational Information and Resources Branch.

EAP REAC Responsibilities: The EAP REAC works closely with the EducationUSA centers and

1. Plans and implements site visits to EAP centers to provide training, to assess quality of center services and make recommendations for improvements, and to bestow candidate status for certification as a U.S. Department of State-affiliated EducationUSA center or to fully certify a center, depending on the center's self-assessment and compliance with U.S. Department of State-approved standards;

2. Coordinates the regional effort to reach wide audiences including underserved Muslim communities with information on U.S. study opportunities;

3. Offers research and guidance in response to specific questions related to educational advising, as requested by advising centers;

4. Produces and maintains regional newsletter, website, electronic bulletin board and/or other methods of sharing information among centers, and oversees the REAC–EAP regional listserv;

5. Organizes and administers internship training programs for beginning and intermediate advisers to be held in one of the larger, well-staffed EducationUSA centers, as necessary;

6. Conducts in-country and sub-regional workshops as needed, as determined in consultation with ECA/A/S/A and Public Affairs Sections;

7. Consults with Public Affairs officers at U.S. embassies and ECA/A/S/A on the direction of and priorities for educational advising in the region;

8. Promotes the EducationUSA brand in conjunction with Public Affairs, Consular Affairs, Foreign Commercial Service, Fulbright Commissions and offices, and other international education entities in the region.

REAC Qualifications:

1. Fluent English language ability;

2. Knowledge of educational advising programs and centers;

3. Experience living and traveling in the region, and a demonstrated willingness and ability to undertake an ambitious travel schedule;

4. Knowledge of the system of higher education in the U.S., including such issues as accreditation, distance learning, the admissions process, standardized testing, and financial aid;

5. Organizational skills needed to administer both the internship programs and conferences;

6. Excellent time management skills, communication skills, and computer/ Internet/listserv skills;

7. Experience in public speaking and in professional training activities;

8. U.S. Citizenship.

REAC Travel Plan: The coordinator plans an annual travel schedule in consultation with ECA/A/S/A (Educational Information and Resources Branch) and with EducationUSA centers and embassies to be visited, in order to conduct site visits consistent with ECA and Public Affairs Section priorities. The proposal should contain a tentative travel plan and should clearly delineate the ability of the organization to make

reliable travel arrangements under adverse conditions as well as the willingness and ability of the REAC to undertake an active travel schedule.

REAC Host Support: The proposal should describe all members of the REAC organization's proposed program staff, clearly demonstrating appropriate expertise. The organization should explain in detail the provisions it will take to maintain communication among the REAC, the advising centers, and ECA/A/S/A.

China Country Coordinator Responsibilities: The China Country Coordinator works closely with the U.S. Embassy in Beijing and the EAP REAC and

1. Plans and implements site visits to centers in China to provide training, to assess quality of center services and make recommendations for improvements, and to bestow candidate status for certification as a U.S. Department of State-affiliated EducationUSA center or to fully certify a center, depending on the center's self-assessment and compliance with U.S. Department of State-approved standards;

2. Coordinates the country-wide effort to reach underserved communities with information on U.S. study opportunities;

3. Offers research and guidance in response to specific questions related to educational advising, as requested by advising centers;

4. Maintains a Chinese language website, electronic bulletin board and/or other methods of sharing information among centers;

5. Conducts in-country workshops as needed, as determined in consultation with ECA/A/S/A and Public Affairs Sections;

6. Consults with Public Affairs officers at U.S. embassies and ECA/A/S/A on the direction of and priorities for educational advising in the country;

7. Promotes the EducationUSA brand among international education entities in the country.

Country Coordinator Qualifications:

1. Fluent Chinese and English;

2. Knowledge of educational advising programs and centers;

3. Experience living and traveling in the region, and a demonstrated willingness and ability to undertake an ambitious travel schedule;

4. Knowledge of the system of higher education in the U.S., including such issues as accreditation, distance learning, the admissions process, standardized testing, and financial aid;

5. Organizational skills needed to administer workshops;

6. Excellent time management skills, communication skills, and computer/Internet/listserv skills;

7. Experience in public speaking and in professional training activities;

Country Coordinator Travel Plan: The coordinator plans an annual travel schedule in consultation with the U.S. Embassy in Beijing and ECA/A/S/A (Educational Information and Resources Branch) and with EducationUSA centers and consulates to be visited, in order to conduct site visits consistent with ECA and Public Affairs Section priorities. The proposal should contain a tentative travel plan and should clearly delineate the ability of the organization to make reliable travel arrangements under adverse conditions as well as the willingness and ability of the Country Coordinator to undertake an active travel schedule.

In a cooperative agreement, ECA is substantially involved in program activities above and beyond routine grant monitoring. The REAC and Country Coordinator must work closely with ECA/A/S and with Public Affairs Sections throughout the region to help establish priorities for educational advising.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY2006.

Approximate Total Funding: $258,000 (up to $460,000 if funding permits).

Approximate Number of Awards: One.

Anticipated Award Date: Pending availability of funds, October 1, 2005.

Anticipated Project Completion Date: September 30, 2006

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $460,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package

Please contact the Educational Information and Resources Branch, ECA/A/S/A, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–260–6936, fax: 202–401–1433, e-mail: *MoraDD@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number: ECA/A/S/A–06–04 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required

application forms, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer Dorothy Mora and refer to the Funding Opportunity Number ECA/A/S/A–06–04 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.2. Diversity, Freedom and Democracy Guidelines.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change.

Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will

be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should submit two budgets and budget narratives; one for up to $258,000 for Hong Kong, and Ho Chi Minh City, Vietnam educational advising and REAC/China Country Coordinator hosting and a separate budget and budget narrative for up to $460,000 to show use of potential additional outreach and training funds described in I. Funding Opportunity Description, Outreach, I. Funding Opportunity Description, REAC Responsibilities, and II. Award Information, Additional Information.

IV.3e.2. Allowable costs for the program include the following:

(1) Salary and benefits

(2) Budget for REAC travel and per diem

(3) Costs for training materials

(4) Costs for training events

(5) Office supplies and expenses

(6) Indirect costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times: Application Deadline Date:* Friday, July 8, 2005.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–06–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning/Ability to achieve program objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

3. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

6. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items

should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding . contributions.

7. *Value to U.S.—Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports: A final program and financial report no more than 90 days after the expiration of the award;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact:

The Educational Information and Resources Branch, ECA/A/S/A, room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–260–6936, fax: 202–401–1433, *http://exchanges.state.gov/education/educationusa.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–06–04.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 5, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–9490 Filed 5–11–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5073]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: English as a Foreign Language (EFL) Institute for Teachers from Bangladesh and Eastern India (West Bengal, Bihar, and Orissa)

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/S/X–05–05.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: June 9, 2005.

Executive Sumary: The Fulbright Teacher Exchange Branch, Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for an assistance award program to support the development of a regional teacher-training institute for South Asia. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop a joint English-as-a-Foreign Language (EFL) Institute for middle school teachers from Bangladesh and Eastern India (West Bengal, Bihar and Orissa). The Institute will provide an intensive six-week U.S. academic program for 10–15 qualified English teachers from each of the respective countries. A smaller number (4–6 for each country) of the U.S. partner

teachers will travel to Bangladesh and Eastern India (West Bengal, Bihar and Orissa) to train other teachers with the project alumni in country.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Bureau asks for detailed proposals from U.S. institutions of higher education that have expertise in the field of EFL. Proposals should demonstrate a deep understanding of the local educational systems in Bangladesh and Eastern India (West Bengal, Bihar and Orissa) as well as the issues confronting English-language education there. Special expertise in handling cross-cultural programs is highly desirable. Proposals should also outline practical and feasible follow-on activities that build on the achievements of the program while promoting the continued exchanges of ideas between the participants, their U.S. partners and the U.S. institution receiving the grant.

The proposal should reflect five overall goals: (1) To produce a highly focused "Institute" (seminar) that enables participants to improve their English speaking and reading skills; (2) to provide training that updates participants in best practices in EFL at the middle school level; (3) to provide training that will improve participants' teaching skills, to include student-centered learning and "train the trainer" skills that they can use to conduct workshops on institute topics in their home countries in the future; (4) to arrange for participants to shadow U.S. teachers at schools with whom they will partner to develop training modules which they will use to train other teachers in their home districts in Bangladesh and Eastern India; and (5) to provide participants with opportunities to interact with Americans, thereby affording them the opportunity to gain awareness and understanding of U.S. culture and society and to discuss their culture with Americans.

Program Design: (Stage I) Participants will be recruited and selected in country by the Public Affairs Section (PAS) of the U.S. Embassy in Dhaka and the U.S. Consulate in Calcutta, coordinating closely with the Regional English Language Office in New Delhi and in consultation with the Bangladeshi and Indian Ministries of Education. U.S. Embassy and Consulate officials will work with the Ministries to facilitate follow-on activities.

After participants have been selected, but prior to their arrival in the U.S., grantee institution representatives will visit both countries to consult with representatives from the PAS of the U.S. Embassy in Dhaka and the U.S. Consulate in Calcutta. After consultation with PAS representatives, the grantee institution will conduct a three-day pre-departure orientation workshop for the participants. This workshop should provide information about the Institute, its goals and expectations of the program participants. It should also relate the Institute objectives to participants' previous training and experience, and promote team-building strategies. At the workshops, organizers should seek input from the Public Affairs Offices of the U.S. Embassy, Dhaka, the U.S. Consulate, Calcutta and the Regional English Language Office in New Delhi about the needs of local teachers, review comparative teaching practices, and address cultural and other practical issues concerning the participants' stay in the U.S.

In planning the Institute's academic and work shadow activities, the U.S. grantee organization, in consultation with the Department of State's Office of English Language Programs, will identify and select specific training and instructional materials to supplement the school curriculums in Bangladesh and Eastern India. These materials will include books, cassette tapes, CD ROMs and other resources. The grantee should include $500–$800 per participant for these training and instructional materials in the budget submission. (See the budget section below.) The grantee will be responsible for purchasing these materials in coordination with the Department of State's Office of English Language Programs and for having them available at the training site. The materials will support the six-week academic and work shadow programs of the Institute as well as the in-country follow-on workshops. These materials are free of copyright and may be duplicated for distribution to local teachers and schools participating in the follow-on workshops.

U.S. Based Training: (Stage II) Following the pre-departure orientation, participants will spend approximately six weeks in the U.S. immersed in the academic and work shadow programs of the Institute organized by the U.S. grantee. The Institute should meet the needs of the Bangladeshi and Indian participants through activities designed by U.S. education specialists with appropriate expertise in EFL instruction, curriculum development and training.

The Institute should have three components: (1) A two-week intensive academic program, (2), a three-week work shadow that will partner foreign and U.S. teachers in team teaching practice, and (3), a three to four day cultural and educational program in Washington, DC. The training portion of the program should address innovative EFL teaching methodologies and approaches and their implementation in Bangladesh and India.

In addition to the work shadow portion of the training, significant time should also be allotted for the inclusion of related professional activities outside the classroom that will introduce participants to U.S. education specialists, activities such as school visits, consultations with other U.S. teachers, and attendance at professional meetings. At a minimum, during the three-week team-teaching, work shadowing component, participants will observe best practices in EFL instruction and practice teaching in a U.S. school.

Among the topics to be addressed during the Institute are: Introduction to computer use for EFL instruction, critical thinking, communication, conflict resolution, analytical and evaluation skills, and student development and motivation.

Participants will not have previously visited the United States. In view of this, an initial orientation to the host institution and its community, as well as an introduction to U.S. society and its system of education, should be an integral part of the Institute and take place shortly after arrival on the U.S. campus. The six-week program should also include cultural activities that facilitate interaction among participants, with American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of Bangladesh and India.

The final component of the Institute is the site visit to Washington, DC. The site visit should complement and reinforce the study program. Visit will include a meeting at the Bureau of

Educational and Cultural Affairs and other meetings as advised by the Fulbright Teacher Exchange Branch of the Department of State and should include cultural sites, schools and educational organizations.

Administration and management of the study program and the program in Washington, DC will be the responsibility of the U.S. grantee organization. The U.S. institution is responsible for domestic and international travel arrangements, as well as for lodging, food, and allowances for participants while at the host institution, in U.S. based schools during the work shadow portion of the program and in Washington, DC.

In-country Workshops: (Stage III) The final stage of this program will consist of four to six follow-on workshops in each country in different schools facilitated by U.S. teachers and their Bangladeshi or Indian partners for in-country EFL teachers who did not participate in the U.S. program. At these workshops, Institute participants, in collaboration with U.S. teachers, will showcase the teaching strategies they developed in the U.S. and practice the teacher training skills acquired during the program. The U.S. grantee institution will be responsible for facilitating these workshops in close collaboration with PAS in Calcutta and Dhaka and the Regional English Language Office in New Delhi. The grantee institution will assist Institute participants and U.S. teacher teams to plan and organize workshops, and will coordinate travel and provide an orientation program for U.S. teachers.

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may submit separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please allow $500 to $800 per participant to purchase English language materials, which will be coordinated with the Department of State Office of English Language Programs. The grant cost to the Bureau for the U.S.-based Institute, work shadow program and the in-country follow-on activity may not exceed $400,000. Please indicate the number of participants that can be accommodated at this funding level, based on detailed calculations of program and administrative costs. Subject to availability of funds, one grant will be awarded to conduct the EFL Institute, work shadow program and follow on for the two countries.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: 2005.
Approximate Total Funding: $400,000.
Approximate Number of Awards: One.
Approximate Average Award: Pending the availability of funds, $400,000.
Ceiling of Award Range: $400,000.
Anticipated Award Date: Pending the availability of funds, September 1, 2005.
Anticipated Project Completion Date: May 2007.
Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by accredited, post secondary educational organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be for allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount over $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package

Please contact the Fulbright Teacher Exchange, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (Tel.) 202–619–5293, (Fax) 202–401–1433, and email, *saritime@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–05–05 at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Mary Ellen Sariti and refer to the Funding Opportunity Number ECA/A/S/X–05–05 at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a

DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which are part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, Fax: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear

descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $400,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) International and domestic travel.
(2) U.S. ground transportation.
(3) Host families.
(4) Professional Development Seminars (instruction, materials, logistics.
(5) Participant maintenance (6 weeks).
(6) Cultural activities.
(7) Book allowance/shipping.
(8) Grantee administrative costs.
(9) Follow-on programming.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: June 9, 2005.

Explanation of Deadlines:

Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–05–05, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3.h. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. embassies for their review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy sections overseas, where appropriate will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

We have devised the program idea.

1. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau

supported programs are not isolated events.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.

9. *Cost-effectiveness and Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV., Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. The ECA Program Officer must receive final schedules for in-country and U.S. activities at least three workdays prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Mary Ellen Sariti, Fulbright Teacher Exchange, Office of Global Educational Programs, ECA/A/S/X, Room 349, ECA/A/S/X–05–05, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (Tel.) 202–619–5293 (Fax) 202–401–1433, *saritime@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–05–05.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 4, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–9489 Filed 5–11–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5075]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Mexico City Educational Advising for U.S. Study and Administration of the Mexico, Central America, and the Caribbean (MCAC) Regional Educational Advising Coordinator (REAC) Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/S/A–06–02.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: Friday, July 8, 2005.

Executive Summary: The Office of Global Educational Programs (ECA/A/S) of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for educational advising for U.S. study in Mexico City and for Regional Educational Advising Coordinator (REAC) services for Mexico, Central America, and the Caribbean (MCAC). Public and private non-profit organizations meeting the provisions

described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals. The Mexico City educational advising center would be part of the worldwide network of over 450 Department of State-affiliated EducationUSA centers that provide comprehensive and unbiased information to interested students, scholars, and other members of the public and conduct outreach about accredited study opportunities in the U.S.

The REAC-hosting organization facilitates the Regional Coordinator's provision of expertise and information in consultation with U.S. embassies and ECA. The REAC supports the network of 51 active U.S. Department of State-affiliated EducationUSA centers in Mexico, Central America, and the Caribbean (MCAC) by sharing information, developing outreach modules and supporting educational advisers in promoting U.S. higher education among broad audiences, including indigenous and underserved populations, communicating trends in U.S. education and international/regional exchanges, disseminating the latest developments in educational technology, and providing direct guidance through site visits, internships, training, and workshops in the region.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: U.S. Department of State-affiliated EducationUSA advising centers guide students in their pursuit of educational opportunities in the United States and prepare them for direct exposure to American values, ideas, models, and traditions. They provide up-to-date, unbiased information on the range of accredited U.S. educational institutions and work to build mutual understanding between the United States and other countries through educational exchange.

Department of State-affiliated overseas EducationUSA advising services operate in nearly five hundred locations around the world. The size of the university population in Mexico and its proximity to the U.S. make it a critical location for educational advising for U.S. study. An EducationUSA center provides general information about academic opportunities in the U.S., offers group informational sessions and individual advising, and conducts outreach to local institutions. EducationUSA advising centers also provide accurate information and advising assistance on the following topics: the U.S. education system; U.S. colleges, universities, and other higher education institutions; the application process to a U.S. university; majors and fields of study; testing requirements; life in the U.S.; visa application procedures; scholarship programs and financial aid; and pre-departure orientation.

The Regional Educational Advising Coordinator (REAC) hosting organization will be responsible for providing on-site technical assistance and training to EducationUSA centers in the Mexico, Central America, and the Caribbean Region (MCAC) and for coordinating the establishment of any new EducationUSA centers, as directed by individual embassies in consultation with ECA/A/S/A. The REAC supports U.S. Department of State-affiliated EducationUSA centers located in the following countries and locations: Anguilla, Antigua, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Cayman Islands, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Nevis, Nicaragua, Panama, St. Kitts, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The MCAC REAC organization should work impartially with all non-governmental organizations, binational centers (such as the Instituto Guatemalteco-Americano or Centro Cultural Costarricense-Norteamericano), Public Affairs Sections located in U.S. embassies, consulates at U.S. embassies, universities, community colleges, libraries, and other organizations involved in educational advising to enable advisers to provide accurate and timely information on U.S. higher educational opportunities. The REAC must work closely with ECA/A/S/A and with Public Affairs Sections throughout the region to help establish priorities for educational advising.

Advising Center Physical Description: The proposal should describe in detail the Mexico City EducationUSA center location, facilities (including size and capacity of public spaces), hours of operation, staffing pattern, (including percentage of time each employee will devote to advising activities, a description of each employee's function and responsibilities), a detailed budget, and a list of services provided by the center. Each month, the Mexico City center should be able to respond to over 4,000 information inquiries, including individual visits, telephone calls/faxes, and electronic communications. The proposal should also include a description of what methods the EducationUSA center and the grantee organization will pursue to supplement ECA funding of operating costs.

Advising Center Outreach: EducationUSA advising centers are encouraged to reach diverse audiences by organizing lectures and events outside the center. These outreach activities provide general information about study opportunities in the United States and about additional services and resources offered at the center. Proposals should include a detailed description and schedule of outreach activities for the grant year. Activities should focus primarily on reaching audiences in economically challenged areas of Mexico. The EducationUSA center in Mexico City will coordinate outreach to broad audiences, including indigenous and underserved areas in Mexico, Central America, and the Caribbean with other EducationUSA centers in the region should funds become available for this purpose in 2006.

The proposal should include information on the development and use of websites to support educational advising and the diffusion of information on U.S. study.

Advising Center Statistics: EducationUSA centers located in Mexico, Central America, and the Caribbean submit monthly statistics to the Mexico, Central America, and Caribbean (MCAC) Regional Educational Advising Coordinator (REAC) on the number of office visitors. The statistics track visitors to the center, phone calls, faxes, letters, e-mail, and Web site hits. Centers also respond to requests for statistical analysis and anecdotal information from the MCAC REAC and ECA's Educational Information and Resources Branch. The proposal should discuss how the EducationUSA center will meet this requirement. The proposal should also explain how the

center would work with Public Affairs and Consular Affairs at the U.S. Embassy in Mexico City.

Advising Center Fund-raising/Cost Defrayment: The proposal should explain the measures taken by the EducationUSA center to generate income and reduce operating costs. U.S. Department of State-affiliated EducationUSA centers must provide a general introduction to U.S. studies and access to basic resources to all interested persons free of charge. To help cover operation costs, the center may charge a fee for specialized services (*e.g.*, in-depth individual advising, workshops to prepare students for U.S. higher education study, or test preparation materials). Fees must be set at reasonable local standards to keep services affordable to the majority of the population. Further examples of cost-defrayment strategies include charging visitors for certification of education documents and charging for printing or photocopying. The proposal should clearly indicate the use planned for savings or income generated through these activities.

Advising Center Coordination/ Communications: The Mexico City EducationUSA center should help coordinate major events, such as adviser training workshops and accredited U.S. college/university fairs. Coordination with other centers in the MCAC region, with Public Affairs offices in the region, and with COMEXUS (Fulbright Commission in Mexico) prevents duplication of efforts and assures U.S. college/university representatives of the opportunity to participate in multiple advising fairs on one trip to the area. All advising events supported by the advising center should be carried out under the banner of EducationUSA with the knowledge of the MCAC REAC.

The center participates in appropriate listservs and maintains contact with other centers in MCAC and in other regions. The center shares incidental educational research that may be of use to other centers.

Advising Center Professional Standards, Guidelines, and Development: Educational advisers follow the Standards of Ethical Conduct adopted by NAFSA: Association of International Educators. Every year, the Mexico City EducationUSA center will receive a collection of educational advising reference materials and announcements of training possibilities through ECA's Educational Information and Resources Branch.

MCAC REAC Responsibilities: The MCAC REAC works closely with the Mexico City EducationUSA center and

1. Plans and implements site visits to MCAC centers to provide training, to assess quality of center services and make recommendations for improvements, and to bestow candidate status for certification as a U.S. Department of State-affiliated EducationUSA center or to fully certify a center, depending on the center's self-assessment and compliance with U.S. Department of State-approved standards;
2. Coordinates the regional effort to reach wide audiences, including underserved and indigenous communities with information on U.S. study opportunities;
3. Offers research and guidance in response to specific questions related to educational advising, as requested by advising centers;
4. Produces and maintains regional newsletter, website, electronic bulletin board and/or other methods of sharing information among centers, and oversees the REAC-MCAC regional listserv;
5. Organizes and administers internship training programs for beginning and intermediate advisers to be held in one of the larger, well-staffed EducationUSA centers, as necessary;
6. Conducts in-country and sub-regional workshops as needed, as determined in consultation with ECA/A/S/A and Public Affairs Sections;
7. Consults with Public Affairs officers at U.S. embassies and ECA/A/S/A on the direction of and priorities for educational advising in the region;
8. Promotes the EducationUSA brand in conjunction with Public Affairs, Consular Affairs, Foreign Commercial Service, Fulbright Commissions and offices, and other international education entities in the region.

REAC Qualifications:

1. Fluent English and Spanish;
2. Knowledge of educational advising programs and centers;
3. Experience living and traveling in the region, and a demonstrated willingness and ability to undertake an ambitious travel schedule;
4. Knowledge of the system of higher education in the U.S., including such issues as accreditation, distance learning, the admissions process, standardized testing, and financial aid;
5. Organizational skills needed to administer both the internship programs and conferences;
6. Excellent time management skills, communication skills, and computer/ Internet/listserv skills;
7. Experience in public speaking and in professional training activities;
8. U.S. Citizenship.

REAC Travel Plan: The coordinator plans an annual travel schedule in consultation with ECA/A/S/A (Educational Information and Resources Branch) and with EducationUSA centers and embassies to be visited, in order to conduct site visits consistent with ECA and Public Affairs Section priorities. The proposal should contain a tentative travel plan and should clearly delineate the ability of the organization to make reliable travel arrangements under adverse conditions as well as the willingness and ability of the REAC to undertake an active travel schedule.

REAC Host Support: The proposal should describe all members of the REAC organization's proposed program staff, clearly demonstrating appropriate expertise. The organization should explain in detail the provisions it will take to maintain communication among the REAC, the advising centers, and ECA/A/S/A.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: FY2006.
Approximate Total Funding: Pending availability, up to $215,000.
Approximate Number of Awards: One.
Approximate Average Award: up to $215,000.
Anticipated Award Date: Pending availability of funds, October 1, 2005.
Anticipated Project Completion Date: September 30, 2006.
Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

The organization should prepare and submit two separate budgets, one for $135,000 and the second for $215,000 with budgeting for enhanced educational advising outreach to indigenous and underserved areas with REAC development of the outreach module and facilitation of small-scale adviser training in the region to conduct outreach.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates awarding one grant, in an amount up to $215,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact the Educational Information and Resources Branch, Global Educational Programs Office, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–4097, Fax 202–401–1433, *frisbiejz@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/A–06–02 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer Jean Frisbie and refer to the Funding Opportunity Number ECA/A/S/A–06–02 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and five copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between

program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should submit two budgets and budget narratives; one for $135,000 for Mexico City educational advising and REAC hosting and a separate budget and budget narrative for $215,000 to show use of potential additional outreach and training funds described in I. Funding Opportunity Description, Advising Center Outreach, I. Funding Opportunity Description, MCAC REAC Responsibilities, and II. Award Information, Additional Information.

IV.3e.2. Allowable costs for the program include the following:

(1) Salary and benefits

(2) Budget for REAC travel and per diem

(3) Costs for training materials

(4) Costs for training events

(5) Office supplies and expenses

(6) Indirect costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times: Application Deadline Date:* July 8, 2005.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and five copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–06–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning/Ability to achieve program objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

3. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

6. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

7. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

A final program and financial report no more than 90 days after the expiration of the award;

REAC reports on visits to advising centers and on regional educational advising events to the Program Office (ECA/A/S/A) within three weeks of the visit or event.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jean Frisbie, Educational Information and Resources Branch, ECA/A/S/A, Room 349, ECA/A/S/A–06–02, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–5434, FAX 202–401–1433, *frisbiejz@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–06–02.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 5, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–9491 Filed 5–11–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5063]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of the Overseas Buildings Operations will meet on Thursday, June 2, 2005 from 9:45 a.m. until 3:30 p.m. eastern standard time. The meeting will be held at the Department of State, 2201 C Street, NW. (entrance on 23rd Street), Room 1107, Washington, DC. The majority of the meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Buildings Operations' senior management and the panel members, on design, operations and building maintenance. Members of the public are asked to kindly refrain from joining the discussion until Director Williams opens the discussion to the public.

Due to limited seating space for members of the public, we ask that you kindly e-mail your information. To participate in this meeting, simply register by e-mail at *IAPR@STATE.GOV* before May 23rd, 2005. Your e-mail should include the following information; Date of birth, social security number, company name and title. This information is required to issue a temporary pass to enter the building.

For questions, please contact *PinzinoLE3@state.gov* or call tel: 703/875–6872 Ms. Gina Pinzino; or *Sprague MA@state.gov* tel: 703/875–7173 for Michael Sprague.

Dated: May 4, 2005.

Jay A. Hicks,

Acting Director, Overseas Buildings Operations, Department of State.

[FR Doc. 05–9488 Filed 5–11–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5077]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On April 28, 2005, the Department of State certified, pursuant to Section 609 of Public Law 101–162 ("Section 609"), that 13 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2005 pursuant to Section 609.

DATES: *Effective Date:* On publication.

FOR FURTHER INFORMATION CONTACT: James Story, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 28, 2005, the Department certified 13 nations on the basis that their sea turtle protection programs are comparable to that of the United States: Belize, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Pakistan, Panama, Suriname, and Venezuela.

The Department also certified 24 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The eight nations and one economy are: the Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.

The Department of State has communicated the certifications under Section 609 to the Office of Field Operations of U.S. Customs and Border Protection.

In addition, this **Federal Register** notice confirms that the requirement for all DS–2031 forms from uncertified nations must be originals and signed by the competent domestic fisheries authority. This policy change was first announced in a Department of State media note released on December 21, 2004.

Dated: May 4, 2005.

Margaret F. Hayes,

Acting; Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 05–9495 Filed 5–11–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34693]

Kaw River Railroad, Inc.—Lease and Operation Exemption—BNSF Railway Company

Kaw River Railroad, Inc. (KRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 15.69 miles of rail lines owned by BNSF Railway Company (BNSF) located: (1) Between milepost 215.55 near Birmingham, MO, and milepost 199.86 at Kearney, MO; and (2) in BNSF's Birmingham Yard, including Track Numbers 1501, 1502, 1503, 1504, 1547, 1555, 1550, 9956, 1560, and 9955 and the ladder track located between Track Numbers 1504 and 1599. In conjunction with the lease of these lines, KRR will acquire incidental overhead trackage rights: (1) Over the portion of Track Number 1599 in BNSF's Birmingham Yard located between milepost 216.76 and milepost 216.18 on BNSF's Kearney Subdivision; and (2) between milepost 216.18 and milepost 215.55 near Birmingham.

KRR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class

II or Class I rail carrier, and that its annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after April 21, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34693, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kark Morell, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 4, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–9323 Filed 5–11–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Revision of an Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Fair Housing Home Loan Data System Regulation—12 CFR 27."

DATES: You should submit your comments by July 11, 2005.

ADDRESSES: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0159, 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.

Additionally, you should send a copy of your comments to Mark Menchik, OMB Desk Officer, 1557–0159, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Electronic mail address is *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Mary Gottlieb, OCC Clearance Officer, 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.

SUPPLEMENTARY INFORMATION: The OCC is proposing to revise the following information collection:

Title: Fair Housing Home Loan Data System Regulation—12 CFR 27.

OMB Number: 1557–0159.

Description: This submission covers an existing regulation, which has not changed. The change in burden is due solely to the decrease in the number of national banks.

The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

The information collection requirements in 12 CFR part 27 are as follows: Section 27.3 requires a national bank that is required to collect data on home loans under 12 CFR part 203 to present the data on Federal Reserve Form FR HMDA–LAR, or in automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3 also lists exceptions to the HMDA–LAR recordkeeping requirements. Section 27.3 further lists the information banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant.

Section 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.

Section 27.5 requires a national bank to maintain the information for 25 months after the bank notifies the applicant of action taken on an application, or after withdrawal of an application.

Section 27.7 requires a national bank to submit the information to the OCC upon its request, prior to a scheduled examination.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,908.

Estimated Total Annual Responses: 1,908.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,476 hours.

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance,

and purchase of services to provide information.

Dated: May 5, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 05–9449 Filed 5–11–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

Summary: Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for membership to the Citizens Coinage Advisory Committee (CCAC) for a representative specially qualified to serve by virtue of his or her experience in the *medallic arts or sculpture.* The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of eleven voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately six to eight times per year. The United States Mint is responsible for providing the necessary support, technical services and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the CCAC meetings and related activities.

Application Deadline: May 31, 2005.

Receipt of Applications: Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing qualifications for membership, by fax to 202–756–6830, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: Madelyn Simmons Marchessault. Submissions must be postmarked no later than May 31, 2005.

Notice Concerning Delivery of First-Class and Priority Mail: The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001, and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

For Further Information Contact: Madelyn Simmons Marchessault, United States Mint Liaison to the CCAC, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Dated: May 4, 2005.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 05–9446 Filed 5–11–05; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee May 2005 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 24, 2005. The purpose of this meeting is to advise the Secretary of the Treasury on themes and designs pertaining to the coinage of the United States and for other purposes.

Date: May 24, 2005.

Time: 1 p.m. to 4 p.m.

Location: The United States Mint, 801 9th Street, NW., Washington, DC 2nd floor.

Subject: Consider themes for a 24-Karat bullion coin and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and location.

The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

For Further Information Contact: Madelyn Simmons Marchessault, United States Mint Liaison to the CCAC, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 4, 2005.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 05–9447 Filed 5–11–05; 8:45 am]

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Federal Register

Thursday,
May 12, 2005

Part II

Environmental Protection Agency

40 CFR Parts 51, 72, et al.
Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 72, 73, 74, 77, 78 and 96

[OAR–2003–0053; FRL–7885–9]

RIN 2060–AL76

Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, EPA finds that 28 States and the District of Columbia contribute significantly to nonattainment of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States. The EPA is requiring these upwind States to revise their State implementation plans (SIPs) to include control measures to reduce emissions of sulfur dioxide (SO_2) and/or nitrogen oxides (NO_X). Sulfur dioxide is a precursor to $PM_{2.5}$ formation, and NO_X is a precursor to both ozone and $PM_{2.5}$ formation. Reducing upwind precursor emissions will assist the downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the NAAQS. Moreover, attainment will be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment by implementing local emissions reductions alone.

Based on State obligations to address interstate transport of pollutants under section 110(a)(2)(D) of the Clean Air Act (CAA), EPA is specifying statewide emissions reduction requirements for SO_2 and NO_X. The EPA is specifying that the emissions reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 starts in 2015 (covering 2015 and thereafter). The required emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units (EGUs).

Today's action also includes model rules for multi-State cap and trade programs for annual SO_2 and NO_X emissions for $PM_{2.5}$ and seasonal NO_X emissions for ozone that States can choose to adopt to meet the required emissions reductions in a flexible and cost-effective manner.

Today's action also includes revisions to the Acid Rain Program regulations under title IV of the CAA, particularly the regulatory provisions governing the SO_2 cap and trade program. The revisions are made because they streamline the operation of the Acid Rain SO_2 cap and trade program and/or facilitate the interaction of that cap and trade program with the model SO_2 cap and trade program included in today's action. In addition, today's action provides for the NO_X SIP Call cap and trade program to be replaced by the CAIR ozone-season NO_X trading program.

DATES: The effective date of today's action, except for the revisions to 40 CFR parts 72, 73, 74, and 77 of the Acid Rain Program regulations, is July 11, 2005. States must submit to EPA for approval enforceable plans for complying with the requirements of this rule by September 11, 2006. The effective date for today's revisions to 40 CFR parts 72, 73, 74, and 77 of the Acid Rain Program regulations is July 1, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0053. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's action, please contact Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov*. For legal questions, please contact Sonja Petersen, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 564–4079, e-mail at *petersen.sonja@epa.gov*. For questions regarding air quality analyses, please contact Norm Possiel, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, Mail Code D243–01, Research Triangle Park, NC, 27711, telephone (919) 541–5692, e-mail at *possiel.norm@epa.gov*. For questions regarding the EGU cost analyses, emissions inventories, and budgets, please contact Roman Kramarchuk, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 343–9089, e-mail at *kramarchuk.roman@epa.gov*. For questions regarding statewide emissions inventories, please contact Ron Ryan, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, Mail Code D205–01, Research Triangle Park, NC, 27711, telephone (919) 541–4330, e-mail at *ryan.ron@epa.gov*. For questions regarding emissions reporting requirements, please contact Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, Mail Code D205–01, Research Triangle Park, NC, 27711, telephone (919) 541–5372, e-mail at *kuykendal.bill@epa.gov*. For questions regarding the model cap and trade programs, please contact Sam Waltzer, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 343–9175, e-mail at *waltzer.sam@epa.gov*. For questions regarding analyses required by statutes and executive orders, please contact Linda Chappell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C339–01, Research Triangle Park, NC, 27711, telephone (919) 541–2864, e-mail at *chappell.linda@epa.gov*. For questions regarding the Acid Rain Program regulation revisions, please contact Dwight C. Alpern, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 343–9151, e-mail at *alpern.dwight@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Except for the revisions to the Acid Rain Program regulations, this action does not directly regulate emissions sources. Instead, it requires States to

revise their SIPs to include control measures to reduce emissions of NO_X and SO_2. The emissions reductions requirement assigned to the States are based on controls that are known to be highly cost effective for EGUs.

Entities potentially regulated by the revisions to the Acid Rain Program regulations in this action are fossil-fuel-fired boilers, turbines, and internal combustion engines, including those that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	[1] NAICS code	Examples of potentially regulated entities
Industry	221112 and others	Electric service providers, boilers, turbines, and internal combustion engines from a wide range of industries.
Federal government	22112[2]	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government.	22112[2] 921150	Fossil fuel-fired electric utility steam generating units owned by municipalities. Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the revisions to the Acid Rain Program regulations in this action. This table lists the types of entities that EPA is aware could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated, you should carefully examine the applicability criteria in 40 CFR 72.6 and 74.2 and the exemptions in 40 CFR 72.7 and 72.8. If you have questions regarding the applicability of the revisions to the Acid Rain Program regulations in this action to a particular entity, consult persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Web Site for Rulemaking Information

The EPA has also established a Web site for this rulemaking at *http://www.epa.gov/cleanairinterstaterule/* or *http://www.epa.gov/cair/* (formerly at *http://www.epa.gov/interstateairquality/*) which includes the rulemaking actions and certain other related information that the public may find useful.

Outline

I. Overview

By notice of proposed rulemaking dated January 30, 2004 and by notice of supplemental rulemaking dated June 10, 2004, EPA proposed to find that certain States must reduce emissions of SO_2 and/or NO_X because those emissions contribute significantly to downwind areas in other States that are not meeting the annual $PM_{2.5}$ NAAQS or the 8-hour ozone NAAQS.[1] Today, EPA takes final action requiring 28 States and the District of Columbia to adopt and submit revisions to their State implementation plans (SIPs), under the requirements of CAA section 110(a)(2)(D), that would eliminate specified amounts of SO_2 and/or NO_X emissions.

Each State may independently determine which emissions sources to subject to controls, and which control measures to adopt. The EPA's analysis indicates that emissions reductions from electric generating units (EGUs) are highly cost effective, and EPA encourages States to adopt controls for EGUs. States that do so must place an enforceable limit, or cap, on EGU emissions (see section VII for discussion). The EPA has calculated the amount of each State's EGU emissions cap, or budget, based on reductions that EPA has determined are highly cost effective. States may allow their EGUs to participate in an EPA-administered cap and trade program as a way to reduce the cost of compliance, and to provide compliance flexibility. The cap and trade programs are described in more detail in section VIII.

The EPA estimates that today's action will reduce SO_2 emissions by 3.5 million tons[2] in 2010 and by 3.8 million tons in 2015; and would reduce annual NO_X emissions by 1.2 million tons in 2009 and by 1.5 million tons in 2015.[2] (These numbers are for the 23 States and the District of Columbia that are affected by the annual SO_2 and NO_X requirements of CAIR.) If all the affected States choose to achieve these reductions through EGU controls, then EGU SO_2 emissions in the affected States would be capped at 3.6 million tons in 2010 and 2.5 million tons in 2015[4]; and EGU annual NO_X emissions would be capped at 1.5 million tons in 2009 and 1.3 million tons in 2015. The EPA estimates that the required SO_2 and NO_X emissions reductions would, by themselves, bring into attainment 52 of the 79 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2010, and 57 of the 74 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2015. The EPA further estimates that the required NO_X emissions reductions would, by themselves, bring into attainment 3 of the 40 counties that are otherwise projected to be in nonattainment for 8-hour ozone in 2010, and 6 of the 22 counties that are projected to be in nonattainment for 8-hour ozone in 2015. In addition, today's rule will improve $PM_{2.5}$ and 8-hour ozone air quality in the areas that would remain

[1] "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule," (69 FR 4566, January 30, 2004) (NPR or January Proposal); "Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule," (69 FR 32684, June 10, 2004) (SNPR or Supplemental Proposal).

[2] These data are from EPA's most recent IPM modeling reflecting the final CAIR of today's notice. These results may differ slightly from those appearing in elsewhere in this preamble and the RIA, which were largely based upon a model run that included Arkansas, Delaware, and New Jersey in the annual CAIR requirements and also did not apply an ozone season cap on any States (the modeling was completed before EPA had determined the final scope of CAIR because of the length of time necessary to perform air quality modeling).

[3] These values represent reductions from future projected emissions without CAIR. In 2010 CAIR will reduce SO_2 by 4.3 million tons from 2003 levels and in 2015 it will reduce SO_2 emissions by 5.4 million tons from 2003 levels. In 2009, CAIR will reduce NO_X levels by 1.7 million tons from 2003 levels and in 2015 it will reduce NO_X levels by 2.0 million tons from 2003 levels.

[4] It should be noted that the banking provisions of the cap and trade program which encourage sources to make significant reductions before 2010 also allow sources to operate above these cap levels until all of the banked allowances are used, therefore EPA does not project that these caps will be met in 2010 or 2015.

nonattainment for those two NAAQS after implementation of today's rule. Because of today's rule, the States with those remaining nonattainment areas will find it less burdensome and less expensive to reach attainment by adopting additional local controls. The Clean Air Interstate Rule (CAIR) will also reduce $PM_{2.5}$ and 8-hour ozone levels in attainment areas, providing significant health and environmental benefits in all areas of the eastern US.

The EPA's CAIR and the previously promulgated NO_X SIP Call reflect EPA's determination that the required SO_2 and NO_X reductions are sufficient to eliminate upwind States' significant contribution to downwind nonattainment. These programs are not designed to eliminate all contributions to transport, but rather to balance the burden for achieving attainment between regional-scale and local-scale control programs.

The EPA conducted a regulatory impact analysis (RIA), entitled "Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005)" that estimates the annual private compliance costs (1999$) of $2.4 billion for 2010 and $3.6 billion for 2015, if all States make the required emissions reductions through the power industry. Additionally, the RIA includes a benefit-cost analysis demonstrating that substantial net economic benefits to society will be achieved from the emissions reductions required in this rulemaking. For determination of net benefits, the above private costs were converted to social costs that are lower since transfer payments, such as taxes, are removed from the estimates. The EPA analysis shows that today's action inclusive of the concurrent New Jersey and Delaware proposal will generate annual net benefits of approximately $71.4 or $60.4 billion in 2010 and $98.5 or $83.2 billion in 2015.[5] These alternate net benefit estimates reflect differing assumptions about the social discount rate used to estimate the benefits and costs of the rule. The lower estimates reflect a discount rate of 7 percent and the higher estimates a discount rate of 3 percent. In 2015, the total annual quantified benefits are $101 or $86.3 billion and the annual social costs are $2.6 or $3.1 billion—benefits outweigh costs in 2015 by a ratio of 39 to 1 or 28 to 1 (3 percent and 7 percent discount rates, respectively). These estimates do not include the value of benefits or costs that we cannot monetize.

In 2015, we estimate that PM-related annual benefits include approximately 17,000 fewer premature fatalities, 8,700 fewer cases of chronic bronchitis, 22,000 fewer non-fatal heart attacks, 10,500 fewer hospitalization admissions (for respiratory and cardiovascular disease combined) and result in significant reductions in days of restricted activity due to respiratory illness (with an estimate of 9.9 million fewer minor restricted activity days) and approximately 1,700,000 fewer work loss days. We also estimate substantial health improvements for children from reduced upper and lower respiratory illness, acute bronchitis, and asthma attacks.

Ozone health-related benefits are expected to occur during the summer ozone season (usually ranging from May to September in the Eastern U.S.). Based upon modeling for 2015, annual ozone-related health benefits are expected to include 2,800 fewer hospital admissions for respiratory illnesses, 280 fewer emergency room admissions for asthma, 690,000 fewer days with restricted activity levels, and 510,000 fewer days where children are absent from school due to illnesses.

In addition to these significant health benefits, the rule will result in ecological and welfare benefits. These benefits include visibility improvements; reductions in acidification in lakes, streams, and forests; reduced eutrophication in water bodies; and benefits from reduced ozone levels for forests and agricultural production.

Several other documents containing detailed explanations of other key elements of today's rule are also included in the docket. These include a detailed explanation of how EPA calculated the State-by-State EGU emissions budgets, and a detailed explanation of the air quality modeling analyses which support this rule.[6] Responses to comments that are not addressed in the preamble to today's rule are included in a separate document.[7]

The remaining sections of the preamble describe the final CAIR requirements and our responses to comments on many of the most important features of the CAIR. Section II, "EPA's Analytical Approach," summarizes EPA's overall analytical approach and responds to general comments on that approach. Section III, "Why Does This Rule Focus on SO_2 and NO_X, and How Were Significant Downwind Impacts Determined?," outlines the rationale for the CAIR focus on SO_2 and NO_X, which are precursors that contribute to $PM_{2.5}$ (SO_2, NO_X) or ozone (NO_X) transport, and the analytic approach EPA used to determine which States had large enough downwind ambient air quality impacts to become subject to today's requirements. Section IV, "What Amounts of SO_2 and NO_X Emissions Did EPA Determine Should Be Reduced?," describes EPA's methodology for determining the amounts of SO_2 and NO_X emissions reductions required under today's rule. Section V, "Determination of State Emissions Budgets," describes how EPA determined the State-by-State emissions reductions requirements and, in the event States elect to control EGUs, the State-by-State EGU emissions budgets. Section VI, "Air Quality Modeling Approach and Results," describes the technical aspects of the air quality modeling and summarizes the numerical results of that modeling. Section VII, "SIP Criteria and Emissions Reporting Requirements," describes the SIP submission date and other SIP requirements associated with the emissions controls that States might adopt. Section VIII, "NO_X and SO_2 Model Cap and Trade Programs," describes the EPA administered cap and trade programs that States electing to control emissions from EGUs are encouraged to adopt. Section IX, "Interactions with Other Clean Air Act Requirements," discusses how this rule interacts with the acid rain provisions in CAA title IV, the NO_X SIP Call, the best available retrofit technology (BART) requirements, and other CAA or regulatory requirements. Finally, section X, "Statutory and Executive Order Reviews," describes the applicability of various administrative requirements for today's rule and how EPA addressed these requirements.

A. What Are the Central Requirements of This Rule?

In today's action, we establish SIP requirements for the affected upwind States under CAA section 110(a)(2). Clean Air Act section 110(a)(2)(D) requires SIPs to contain adequate provisions prohibiting air pollutant emissions from sources or activities in those States that contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to a NAAQS. Based on air

[5] Benefit and cost estimates reflect annual SO_2 and NO_X controls for Arkansas that are not a part of the final CAIR program. For this reason, these estimates are slightly overstated.

[6] Technical support document: "Regional and State SO_2 and NO_X Emissions Budgets" is included in the docket.

Technical support document: "Air Quality Modeling" is included in the docket.

[7] "Response to Significant Comments on the Proposed Clean Air Interstate Rule" is included in the docket.

quality modeling analyses and cost analyses, EPA has concluded that SO_2 and NO_X emissions in certain States in the eastern part of the country, through the phenomenon of air pollution transport,[8] contribute significantly to downwind nonattainment, or interfere with maintenance, of the $PM_{2.5}$ and 8-hour ozone NAAQS. The EPA is requiring SIP revisions in 28 States and the District of Columbia to reduce SO_2 and/or NO_X emissions, which are important precursors of $PM_{2.5}$ (NO_X and SO_2) and ozone (NO_X).

The 23 States along with the District of Columbia that must reduce annual SO_2 and NO_X emissions for the purposes of the $PM_{2.5}$ NAAQS are: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

The 25 States along with the District of Columbia that must reduce NO_X emissions for the purposes of the 8-hour ozone NAAQS are: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. In addition to making the findings of significant contribution to nonattainment or interference with maintenance, EPA is requiring each State to make specified amounts of SO_2 and/or NO_X emissions reductions to eliminate their significant contribution to downwind States. The affected States and the District of Columbia are required to adopt and submit the required SIP revision with the necessary control measures by 18 months from the signature date of today's rule.

The emissions reductions requirements are based on controls that EPA has determined to be highly cost effective for EGUs. However, States have the flexibility to choose the measures to adopt to achieve the specified emissions reductions. If the State chooses to control EGUs, then it must establish a budget—that is, an emissions cap—for those sources. Today's rule defines the EGU budgets for each affected State if a State chooses to control only EGUs. The rule also explains the emission reduction requirements if a State chooses to achieve some or all of its required emission reductions by controlling sources other than EGUs. Due to feasibility constraints, EPA is requiring emissions reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 starts in 2015 (covering 2015 and thereafter). For States subject to findings of significant contribution for $PM_{2.5}$, EPA is establishing annual emissions budgets. For States subject to findings of significant contribution for 8-hour ozone, the CAIR specifies ozone-season NO_X emissions budgets. States subject to findings for both $PM_{2.5}$ and ozone will have both an annual and an ozone season NO_X budget.

The EPA is providing, as an option to States, model cap and trade programs for EGUs. The EPA will administer these programs, which will be governed by rules provided by EPA that States may adopt or incorporate by reference.

With respect to federally recognized Indian Tribes, the applicability of this rule is governed by three factors: The flexible regulatory framework for Tribes provided by the CAA and the Tribal Authority Rule (TAR); the absence of any existing EGUs on Tribal lands in the CAIR region; and the existence of reservations within the geographic areas which we determined to contribute significantly to nonattainment areas.

Under CAA section 301(d) as implemented by the TAR, eligible Indian Tribes may implement all, but are not required to implement any, programs under the CAA for which EPA has determined that it is appropriate to treat Tribes similarly to States. Tribes may also implement "reasonably severable" elements of programs (40 CFR 49.7(c)). In the absence of Tribal implementation of a CAA program or programs, EPA will utilize Federal implementation for the relevant area of Indian country as necessary or appropriate to protect air quality, in consultation with the Tribal government.

The TAR contains a list of provisions for which it is not appropriate to treat Tribes in the same manner as States (40 CFR 49.4). The CAIR is based on the States' obligations under CAA section 110(a)(2)(D) to prohibit emissions which would contribute significantly to nonattainment in, or interfere with maintenance by, other States due to pollution transport. Because CAA section 110(a)(2)(D) is not among the provisions we determined to be inappropriate to apply to Tribes in the same manner as States, that section is applicable, where necessary and appropriate, to Tribes.

However, among the CAA provisions not appropriate for Tribes are "[s]pecific plan submittal and implementation deadlines for NAAQS-related requirements * * *" (40 CFR 49.4(a)). Therefore, Tribes are not required to submit implementation plans under section 110(a)(2)(D). Moreover, because no Tribal lands in the CAIR region currently contain any of the sources (EGUs) on which we based the emissions reductions requirements applicable to States, there are no emission reduction requirements applicable to Tribes.

At the same time, the existence of the CAIR cap and trade program in some or all of the affected States will have implications for any future construction of EGUs on Tribal lands. The geographic scope of the CAIR cap and trade program is being determined by a two step-process: the EPA's determination of which States significantly contribute to downwind areas, and the decision by those affected States whether to satisfy their emission reduction requirement by participating in the CAIR cap and trade program.

With respect to the first step of this process (significant contribution test), notwithstanding the political autonomy of Tribes, we view the zero-out modeling as representing the entire geographic area within the State being considered, regardless of the jurisdictional status of areas within the State. Therefore, any EGU constructed in the future on a reservation within a CAIR-affected State would be located in an area which we have already determined to significantly contribute to downwind nonattainment.[9]

With respect to decisions by States to participate in the CAIR cap and trade program, because Tribal governments are autonomous, such a decision would not be directly binding for any Tribe located within the State.

Nonetheless, as a matter of a policy, cap and trade programs by their nature must apply consistently throughout the geographic region of the program in order to be effective. Otherwise, the existence of areas not covered by the cap could create incentives to locate sources there, and thereby undermine

[8] In today's final rule, when we use the term "transport" we mean to include the transport of both fine particles ($PM_{2.5}$) and their precursor emissions and/or transport of both ozone and its precursor emissions.

[9] In this regard, the construction of a new EGU on a reservation would be analogous to the construction of a new EGU within a county or region of a CAIR-affected State that does not presently contain any EGUs. This is not meant to imply that Tribes are in any way legally similar to counties, only that, within the CAIR region, the geographic scale of reservations is more similar to counties than to States.

the environmental goals of the program.[10]

In light of these considerations, in the event of any future planned construction of EGUs on Tribal lands within the CAIR region, EPA intends to work with the relevant Tribal government to regulate the EGU through either a Tribal implementation plan (TIP) or a Federal implementation plan (FIP). We anticipate that at a minimum, a proposed EGU on a reservation within a State participating in the CAIR cap and trade program would need to be made subject to the cap and trade program. In the case of a new EGU on a reservation in a CAIR-affected State which chose not to participate in the cap and trade program, the new EGU might also be required, through a TIP or FIP, to participate in the program. This would depend on the potential for emissions shifting and other specific circumstances (*e.g.*, whether the EGU would service the electric grid of States involved in the cap and trade program.) Again, EPA will work with the relevant Tribal government to determine the appropriate application of the CAIR.

Finally, as discussed in the SNPR, Tribes have objected to emissions trading programs that allocate allowances based on historic emissions, on the grounds that this rewards first-in-time emitters at the expense of those who have not yet enjoyed a fair opportunity to pursue economic development. Comments on the CAIR proposal from Tribes requested a Federal set-aside of allowances for Tribes, or other special Tribal allowance provisions. The few comments received from States on the issue generally opposed allocations based on Indian country status. One State expressed a willingness to share its emissions budget with Tribes in the event an EGU locates in Indian country.

The EPA does not believe there is sufficient information to design Tribal allocation provisions at this time. A program designed to address concerns which remain largely speculative is likely to create more problems through unintended consequences than it solves. Therefore, rather than create a Federal allowance set-aside for Tribes, EPA will work with Tribes and potentially affected States to address concerns regarding the equity of allowance allocations on a case-by-case basis as the need arises. The EPA may choose to revisit this issue through a separate rulemaking in the future.

[10] Although it is possible that the CAIR cap and trade program may cover a discontinuous area depending on which States participate, the failure of a State to participate does not raise the same environmental integrity concern. A state that does not participate in the cap and trade program must still submit a SIP that limits emissions to the levels mandated by the CAIR emission reduction requirements, taking into account any emissions from new sources.

B. Why Is EPA Taking This Action?

Emissions reductions to eliminate transported pollution are required by the CAA, as noted above. There are strong policy reasons for addressing interstate pollution transport.

1. Policy Rationale for Addressing Transported Pollution Contributing to $PM_{2.5}$ and Ozone Problems

Emissions from upwind States can alone, or in combination with local emissions, result in air quality levels that exceed the NAAQS and jeopardize the health of residents in downwind communities. Control of $PM_{2.5}$ and ozone requires a reasonable balance between local and regional controls. If significant contributions of pollution from upwind States that can be abated by highly cost-effective controls are unabated, the downwind area must achieve greater local emissions reductions, thereby incurring extra clean-up costs. Requiring reasonable controls for both upwind and local emissions sources should result in achieving air quality standards at a lesser cost than a strategy that relies solely on local controls. For all these reasons, addressing interstate transport in advance of the time that States must adopt local nonattainment plans, will make it easier for States to develop their nonattainment plans because the States will know the degree to which the pollution flowing into their nonattainment areas will be reduced.

The EPA addressed interstate pollution transport for ozone in the NO_X SIP Call rule published in 1998.[11] Today's rulemaking is EPA's first attempt to address interstate pollution transport for $PM_{2.5}$. The NO_X SIP Call is substantially reducing ozone transport, helping downwind areas meet the 1-hour and 8-hour ozone standards. The EPA has reassessed ozone transport in this rulemaking for two reasons. First, several years have passed since promulgation of the NO_X SIP Call and updated air quality and emissions data are available. Second, some areas are expected to face substantial difficulty in meeting the 8-hour ozone standards. As a result, EPA has determined it is important to assess the degree to which ozone transport will remain a problem after full implementation of the NO_X SIP Call, and to assess whether further controls are warranted to ensure continued progress toward attainment. The modeling for the CAIR includes the NO_X SIP Call in the baseline and examines later years than the NO_X SIP Call analyses.

[11] "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule," (63 FR 57356; October 27, 1998).

a. The $PM_{2.5}$ Problem

By action dated July 18, 1997, we revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using as the indicator particles with aerodynamic diameters smaller than a nominal 2.5 micrometers, termed $PM_{2.5}$ (62 FR 38652). We established health- and welfare-based (primary and secondary) annual and 24-hour standards for $PM_{2.5}$. The annual standards are 15 micrograms per cubic meter, based on the 3-year average of annual mean $PM_{2.5}$ concentrations. The 24-hour standard is a level of 65 micrograms per cubic meter, based on the 3-year average of the annual 98th percentile of 24-hour concentrations. The annual standard is generally considered the most limiting.

Fine particles are associated with a number of serious health effects including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia. The EPA has estimated that attainment of the $PM_{2.5}$ standards would prolong tens of thousands of lives and would prevent, each year, tens of thousands of hospital admissions as well as hundreds of thousands of doctor visits, absences from work and school, and respiratory illnesses in children.

Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children. More detailed information on health effects of fine particles can be found on EPA's Web site at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.*

At the time EPA established the $PM_{2.5}$ primary NAAQS in 1997, we also established welfare-based (secondary) NAAQS identical to the primary standards. The secondary standards are designed to protect against major environmental effects caused by PM such as visibility impairment—including in Class I areas which include national parks and wilderness areas across the country—soiling, and materials damage.

As discussed in other sections of this preamble, SO_2 and NO_X emissions both contribute to fine particle concentrations. In addition, NO_X emissions contribute to ozone problems, described in the next section. We believe the CAIR will significantly reduce SO_2 and NO_X emissions that contribute to the $PM_{2.5}$ and 8-hour ozone problems described here.

The $PM_{2.5}$ ambient air quality monitoring for the 2001–2003 period shows that areas violating the standards are located across much of the eastern half of the United States and in parts of California, and Montana. Based on these nationwide data, 82 counties have at least one monitor that violates either the annual or the 24-hour $PM_{2.5}$ standard. Most areas violate only the annual standard; a small number of areas violate both the annual and 24-hour standards; and no areas violate just the 24-hour standard. The population of these 82 counties totals over 56 million people.

Only two States in the western part of the U.S., California and Montana, have counties that exceeded the $PM_{2.5}$ standards. On the other hand, in the eastern part of the U.S., 124 sites in 69 counties (with total population of 34 million) violated the annual $PM_{2.5}$ standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) over the 3-year period from 2001 to 2003, while 469 sites met the annual standard. No sites in the eastern part of the United States exceeded the daily $PM_{2.5}$ standard of 65 $\mu g/m^3$. The 69 violating counties are located in a region made up of 16 States (plus the District of Columbia), extending eastward from St. Louis County, Missouri, the western-most violating county and including the following States: Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Missouri, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, West Virginia, and the District of Columbia. The EPA published the $PM_{2.5}$ attainment and nonattainment designations on January 5, 2005 (70 FR 944). The designations will be effective on April 5, 2005.

Because interstate transport is not believed to be a significant contributor to exceedances of the $PM_{2.5}$ standards in California or Montana, today's final CAIR does not cover these States.

b. The 8-Hour Ozone Problem

By action dated July 18, 1997, we promulgated identical revised primary and secondary ozone standards that specified an 8-hour ozone standard of 0.08 parts per million (ppm). Specifically, under the standards, the 3-year average of the fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.08 ppm. In general, the revised 8-hour standards are more protective of public health and the environment and more stringent than the pre-existing 1-hour ozone standards. All areas that were violating the 1-hour ozone standard at the time of the 8-hour ozone designations were also designated as nonattainment for the 8-hour ozone standard. More areas do not meet the 8-hour standard than do not meet the 1-hour standard. The EPA published the 8-hour ozone attainment and nonattainment designations in the **Federal Register** on April 30, 2004 (69 FR 23858). The designations were effective on June 15, 2004. Pursuant to EPA's final rule to implement the 8-hour ozone standard (69 FR 23951; April 30, 2004), EPA will revoke the 1-hour ozone standard on June 15, 2005, 1 year after the effective date of the 8-hour designations.

Short-term (1- to 3-hour) and prolonged (6- to 8-hour) exposures to ambient ozone have been linked to a number of adverse health effects. Short-term exposure to ozone can irritate the respiratory system, causing coughing, throat irritation, and chest pain. Ozone can reduce lung function and make it more difficult to breathe deeply. Breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and the use of additional medication. Increased hospital admissions and emergency room visits for respiratory problems have been associated with ambient ozone exposures. Longer-term ozone exposure can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. A lower quality of life may result if the inflammation occurs repeatedly over a long time period (such as months, years, a lifetime).

People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory diseases, such as asthma, and people with unusual sensitivity to ozone.

In addition to causing adverse health effects, ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests, and other environmental stresses (*e.g.*, harsh weather). In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can also decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of our national parks and recreation areas. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production (*e.g.*, soybean) and visible injury to some leaf crops (*e.g.*, lettuce, spinach, tobacco), as well as visible injury to ornamental plants (*i.e.*, grass, flowers, shrubs). Other types of welfare loss may not be quantifiable (*e.g.*, reduced aesthetic value of trees growing in heavily visited national parks). More detailed information on health effects of ozone can be found at the following EPA Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.*

Almost all areas of the country have experienced some progress in lowering ozone concentrations over the last 20 years. As reported in the EPA's report, "The Ozone Report: Measuring Progress Through 2003," [12] national average levels of 1-hour ozone improved by 29 percent between 1980 and 2003 while 8-hour levels improved by 21 percent over the same time period. The Northeast and West regions have shown the greatest improvement since 1980. However, most of that improvement occurred during the first part of the period. In fact, during the most recent 10 years, ozone levels have been relatively constant reflecting little if any air quality improvement. For this reason, ozone has exhibited the slowest progress of the six major pollutants tracked nationally.

Although ambient ozone levels remained relatively constant over the past decade, additional control requirements have reduced emissions of the two major ozone precursors, VOC and NO_X, although at different rates. Emissions of VOCs were reduced by 32 percent from 1990 levels, while emissions of NO_X declined by 22 percent.

Ozone remains a significant public health concern. Presently, wide geographic areas, including most of the nation's major population centers, experience unhealthy ozone levels, that is, concentrations violating the NAAQS for 8-hour ozone. These areas include much of the eastern part of the United States and large areas of California. More specifically, 297 counties with a total population of over 124 million people currently violate the 8-hour ozone standard. Most of these ozone

[12] EPA 454/K–04–001, April 2004.

violations occur in the eastern half of the United States: 268 counties with a population of over 93 million.

When ozone and $PM_{2.5}$ are examined jointly, 322 counties with 131 million people are violating at least one of the standards while 57 counties nationwide have concentrations violating both standards with a total population of over 49 million people. Of these, 46 counties with a population of over 28 million are in the Eastern United States.

c. Other Environmental Effects Associated With SO_2 and NO_X Emissions

Today's action will result in benefits in addition to the enumerated human health and welfare benefits resulting from reductions in ambient levels of $PM_{2.5}$ and ozone. Reductions in NO_X and SO_2 will contribute to substantial visibility improvements in many parts of the Eastern U.S. where people live, work, and recreate, including Federal Class I areas such as the Great Smoky Mountains. Reductions in these pollutants will also reduce acidification and eutrophication of water bodies in the region. In addition, reduced mercury emissions are anticipated as a result of this rule. Reduced mercury emissions will lessen mercury contamination in lakes and thereby potentially decrease both human and wildlife exposure to mercury-contaminated fish.

2. The CAA Requires States To Act as Good Neighbors by Limiting Downwind Impacts

The CAA includes the "good neighbor" provision of section 110(a)(2)(D), which requires that every SIP prohibit emissions from any source or other type of emissions activity in amounts that will contribute significantly to nonattainment in any downwind State, or that will interfere with maintenance in any downwind State. In today's action, EPA is determining that 28 States and the District of Columbia, all in the eastern part of the United States, have emissions of SO_2 and/or NO_X that will contribute significantly to nonattainment, or interfere with maintenance, of the $PM_{2.5}$ NAAQS and/or the 8-hour ozone NAAQS in another State. Under EPA's general authority to clarify the applicability of CAA requirements, as provided in CAA section 301(a)(1), EPA is establishing the amount of SO_2 and NO_X emissions that each affected State must prohibit by submitting appropriate SIP provisions to EPA. The improvements in air quality will assist downwind States in developing their SIPs to provide for attainment and maintenance in those nonattainment areas.

3. Today's Rule Will Improve Air Quality

The EPA has estimated the improvements in emissions and air quality that would result from implementing the CAIR. These improvements, which are substantial, are summarized earlier in this section.

C. What Was the Process for Developing This Rule?

By action dated January 30, 2004, EPA issued a proposal that included many of the components of today's action. "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule," (69 FR 4566). The Administrator signed the proposed rule—termed, at that time, the Interstate Air Quality Rule—on December 17, 2003, and EPA posted it on its Web site for this rule on that date. The Web site address at that time was *http://www.epa.gov/interstateairquality.* (The address has since changed to *http://www.epa.gov/cleanairinterstaterule/* or *http://www.epa.gov/cair/.*)

The EPA held public hearings on the proposal, in conjunction with a proposed rulemaking concerning mercury and other hazardous air pollutants from EGUs, on February 25–26, 2004, in Chicago, Illinois; Philadelphia, Pennsylvania; and Research Triangle Park, North Carolina. The comment period for the NPR closed on March 30, 2004. The EPA received over 6,700 comments on the proposal.

By action dated June 10, 2004, EPA issued a supplemental notice of proposed rulemaking (SNPR), "Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule," (69 FR 32684). The Administrator signed the SNPR for this rule—now called the Clean Air Interstate Rule—on May 18, 2004, and EPA placed it on the Web site on that date. The SNPR included, among other things, proposed regulatory language for the rule, revised proposals concerning State-level emissions budgets, proposed State reporting requirements and SIP approvability criteria, and proposed model cap and trade rules. The SNPR also proposed that under certain circumstances the CAIR requirements could replace the BART requirements of CAA sections 169A and 169B. The EPA held a public hearing on the SNPR on June 3, 2004, in Alexandria, Virginia. The comment period for the SNPR closed on July 26, 2004. The EPA received over 400 comments on the SNPR.

By a notice of data availability (NODA) dated August 6, 2004, EPA announced the availability of additional documents for this action. "Availability of Additional Information Supporting the Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)," (69 FR 47828). The documents had been placed on the website on or about July 27, 2004, and in the EDOCKET on that date, or shortly thereafter. The EPA allowed public comment on those additional documents until August 27, 2004. Around 30 comments were received on the NODA.

The EPA has responded to all significant public comments either in this preamble or in the response to comment document which is contained in the docket.

Comments on Rulemaking Process: Some commenters expressed concerns about certain aspects of this process. One concern was that EPA did not allow sufficient time to comment on the SNPR. Commenters noted that important program elements—including regulatory language—appeared for the first time in the SNPR, but EPA held a public hearing on the SNPR 7 days before the SNPR was published in the **Federal Register** and only 16 days after the SNPR had been posted on the website. The EPA believes that the 16-day period preceding the public hearing, and the total of 45 days to comment on the SNPR following its publication in the **Federal Register**, constituted an adequate opportunity for members of the public to comment on the SNPR.

Commenters also expressed concern that certain technical documents were not made available in sufficient time to comment. However, EPA had placed all technical support documents for the NPR in the EDOCKET as of the date of publication of the NPR, and all technical support documents for the SNPR had been placed in the EDOCKET as of the date of publication of the SNPR.

Commenters also expressed concern that in the SNPR, EPA proposed significant changes to other regulatory programs. The EPA agrees that the SNPR did include proposed changes to certain regulatory programs, *i.e.*, the requirements for BART under CAA sections 169A and 169B (concerning visibility), certain provisions (primarily concerning the allowance-holding requirement) in the title IV (Acid Rain Program) rules, and certain emissions reporting rules under the NO_X SIP Call (40 CFR 51.122) and Consolidated

Emissions Reporting Rule (CERR) (title 40, part 51, subpart A). The EPA believes that to the extent the requirements for BART and emissions reporting rule revisions are tied to the CAIR, affected members of the public had adequate notice of those revisions. (These revisions are described in section VII.) However, the SNPR contained some revisions to the emissions reporting rules that were not tied to the transport provisions. The EPA is not taking final action today on the proposal for the emissions reporting rules that were not tied to the transport provisions and instead is issuing a new proposal for them, which will provide additional notice and opportunity to comment.

Further, the Acid Rain Program rule revisions, although connected to the CAIR, apply to all persons subject to the Acid Rain Program, including persons who are not affected by the CAIR. (These revisions are described in section IX.) Specifically, as explained in section IX, the revisions to the Acid Rain Program rules are aimed at facilitating coordination of the Acid Rain Program and the CAIR model SO_2 cap and trade rule and/or are being adopted on their own merits, independently of the need to coordinate with the CAIR. Most of the proposed revisions involve changing from unit-by-unit to source-by-source compliance with the allowance-holding requirement of the Acid Rain Program and therefore affect every source subject to the Acid Rain Program, whether or not the source is also in a State covered by the CAIR. The change to source-by-source compliance increases a source's flexibility to use—in meeting the allowance-holding requirement—allowances held by any unit at the source. This flexibility reduces the likelihood that sources will incur large excess emissions penalties from inadvertent, minor errors (*e.g.*, in how allowances are distributed among the units at the source), while preserving the environmental goals of the Acid Rain Program. The remaining revisions to the Acid Rain Program rules similarly cover all Acid Rain Program sources. Indeed, none of the comments on the proposed Acid Rain Program rule revisions stated that the revisions would apply only to certain Acid Rain Program sources, but rather seemed to treat the revisions as applying program-wide. As discussed in section IX, EPA is finalizing, with minor modifications, the Acid Rain Program rule revisions.

Commenters also expressed concern that between the NPR and the SNPR, EPA had proposed program elements in a piecemeal fashion, which made it more difficult to comprehend and comment on the rule, and that the SNPR's comment period was too short to allow the public adequate opportunity to comment on the numerous and complex issues raised in that proposal. The EPA recognizes the challenges faced by commenters in this rulemaking, however, we believe that the comment periods for the NPR and SNPR were adequate, and note that we did receive extensive and highly detailed, technical comments on both proposals.

D. What Are the Major Changes Between the Proposals and the Final Rule?

The EPA is finalizing a number of revisions to the proposed elements of the CAIR. These revisions are in response to information received in public comments and new analyses conducted by EPA. The following is a summary list of those changes:

- The first phase of NO_X reductions starts in 2009 (covering 2009–2014) instead of 2010. The first phase of the SO_2 reductions still starts in 2010 (covering 2010–2014).
- The emissions inventories used for $PM_{2.5}$ and 8-hour ozone air quality modeling have been updated and improved; we modeled $PM_{2.5}$ using the Community Multiscale Air Quality Model (CMAQ) and meteorology for 2001 instead of the Regional Model for Simulating Aerosols and Deposition (REMSAD) and meteorology for 1996.
- The final CAIR does not cover Kansas based on new analyses of its contribution to downwind $PM_{2.5}$ nonattainment.
- Arkansas, Delaware, Massachusetts, and New Jersey are not subject to the CAIR based on their contribution to $PM_{2.5}$ nonattainment and maintenance. However, they remain subject to NO_X emissions reductions requirements on the basis of their contribution to downwind 8-hour ozone nonattainment. This requirement is for the ozone season rather than the entire year. The EPA is issuing a new proposal to include Delaware and New Jersey for the $PM_{2.5}$ NAAQS based on additional considerations.
- The change in States covered by the rule necessitates a re-analysis of the NO_X budgets for all covered States. This changes the amount of the budget, but not the procedure EPA used to calculate it.
- The SIP approval criteria have been changed to no longer exclude measures otherwise required by the CAA from being included in the State's compliance with CAIR.
- A 200,000 ton compliance supplement pool was added for NO_X. Allowances from this pool can either be awarded to sources that make early reductions or to sources that demonstrate need.
- All States for which EPA has made a finding with respect to ozone are subject to an ozone season cap. In order to implement this ozone season cap, EPA has finalized an ozone season NO_X trading program in addition to the annual NO_X and SO_2 trading programs that were proposed.
- A number of changes were made to the trading rule including: changes to the model NO_X allocation methodology (to fuel weight allocations) and the addition of opt in provisions.
- The EPA is not finalizing some of the emissions reporting requirements in response to public comments indicating we gave inadequate notice of the changes that were proposed to be applicable to all States, not just those affected by the CAIR emission reduction requirements. These are being reproposed, with modifications, in a separate action to allow additional opportunity for public comment by all affected States and other parties.

II. The EPA's Analytical Approach

Overview: Today's rulemaking is based on the "good neighbor" provision of CAA section 110(a)(2)(D), which requires States to develop SIP provisions assuring that emissions from their sources do not contribute significantly to downwind nonattainment, or interfere with maintenance, of the NAAQS. The EPA interpreted this provision, and developed a detailed methodology for applying it, in the NO_X SIP Call rulemaking, which concerned interstate transport of ozone precursors.

Today's rule requires upwind States to submit SIP revisions requiring their sources to reduce emissions of certain precursors that significantly contribute to nonattainment in, or interfere with maintenance of, the $PM_{2.5}$ and 8-hour ozone national ambient air quality standards in downwind States. The EPA developed today's rule relying heavily on the NO_X SIP Call approach.

This section of the preamble outlines the key aspects of today's approach, some of which are described in greater detail in other sections of the preamble. The EPA received comments on today's approach that we respond to either in this section or in the other sections of the preamble. This section also describes how today's approach varies from the NO_X SIP Call, which variations result from, among other things, the fact that today's action regulates a different pollutant ($PM_{2.5}$) with a different precursor (SO_2).

A. How Did EPA Interpret the Clean Air Act's Pollution Transport Provisions in the NO_X SIP Call?

1. Clean Air Act Requirements

The central CAA provisions concerning pollutant transport, for purposes of today's action, are found in section 110(a)(2)(D). Under these provisions, each SIP must—

(D) Contain adequate provisions

(i) Prohibiting * * * any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any * * * national primary or secondary ambient air quality standard * * *.

2. The NO_X SIP Call Rulemaking

Promulgated by action dated October 27, 1998, the NO_X SIP Call was EPA's principal effort to reduce interstate transport of precursors for both the 1-hour ozone NAAQS and the 8-hour ozone NAAQS. (See "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule," (63 FR 57356).) In that rulemaking, EPA imposed seasonal NO_X reduction requirements on 22 States and the District of Columbia in the eastern part of the country.

a. Analytical Approach of NO_X SIP Call

In the NO_X SIP Call, EPA interpreted section 110(a)(2)(D) to authorize EPA to determine the amount of emissions in upwind States that "contribute significantly" to downwind nonattainment or "interfere with" downwind maintenance, and to require those States to eliminate that amount of emissions. The EPA recognized that States must retain full authority to choose the sources to control, and the control mechanisms, to achieve those reductions.

The EPA set out several criteria or factors for the "contribute significantly" test, and further indicated that the same criteria should apply to the "interfere with maintenance" provision: [13]

* * * EPA determined the amount of emissions that significantly contribute to downwind nonattainment from sources in a particular upwind State primarily by (i) evaluating, with respect to each upwind State, several air quality related factors, including determining that all emissions from the State have a sufficiently great impact downwind (in the context of the collective contribution nature of the ozone problem); and (ii) determining the amount of that State's emissions that can be eliminated through the application of cost-effective controls. Before reaching a conclusion, EPA evaluated several secondary, and more general, considerations. These include:

- The consistency of the regional reductions with the attainment needs of the downwind areas with nonattainment problems.
- The overall fairness of the control regimes required of the downwind and upwind areas, including the extent of the controls required or implemented by the downwind and upwind areas.
- General cost considerations, including the relative cost-effectiveness of additional downwind controls compared to upwind controls.

63 FR 57403

i. Air Quality Factor

The first factor concerns evaluating the impact on downwind air quality of the upwind State's emissions. As EPA stated in the NO_X SIP Call: * * *

EPA specifically considered three air quality factors with respect to each upwind State * * *.

- The overall nature of the ozone problem (*i.e.*, "collective contribution").
- The extent of the downwind nonattainment problems to which the upwind State's emissions are linked, including the ambient impact of controls required under the CAA or otherwise implemented in the downwind areas.
- The ambient impact of the emissions from the upwind State's sources on the downwind nonattainment problems.

63 FR 57376

The EPA explained the first factor, collective contribution, by noting,

[V]irtually every nonattainment problem is caused by numerous sources over a wide geographic area* * *[. This] factor suggest[s] that the solution to the problem is the implementation over a wide area of controls on many sources, each of which may have a small or unmeasureable ambient impact by itself.

63 FR 57377

The second air quality factor—the extent of downwind nonattainment problems—concerns whether downwind areas should be considered to be in nonattainment. This determination took into account the then-current air quality of the area, the predicted future air quality (assuming the implementation of required controls, but not the transport requirements that were the subject of the NO_X SIP Call), and the boundaries of the area in light of designation status (63 FR 57377).

The EPA applied the third air quality factor—the ambient impact of emissions from the upwind sources—by projecting the amount of the upwind State's entire inventory of anthropogenic emissions to the year 2007, and then quantifying, through the appropriate air quality modeling techniques, the impact of those emissions on downwind nonattainment.[14] Specifically, (i) EPA determined the minimum threshold impact that the upwind State's emissions must have on a downwind nonattainment area to be considered potentially to contribute significantly to nonattainment; and then (ii) for States with impacts above that threshold, EPA developed a set of metrics for further evaluating the contribution of the upwind State's emissions on a downwind nonattainment area (63 FR 57378). The EPA considered a State with emissions that had a sufficiently great impact to contribute significantly to the downwind area (depending on application of the cost factor). In general, EPA established the thresholds at a relatively low level, which reflected the collective contribution phenomenon. That is, because the ozone problem is caused by many relatively small contributions, even relatively small contributors must participate in the solution.

ii. Cost Factor

The cost factor is the second major factor that EPA applied to determine the significant contribution to nonattainment: "EPA * * * determined whether any amounts of the NO_X emissions may be eliminated through controls that, on a cost-per-ton basis, may be considered to be highly cost effective." (*See* 63 FR 57377.)

(I) Choice of Highly Cost-Effective Standard

The EPA selected the standard of highly cost effective in order to assure State flexibility in selecting control strategies to meet the emissions reduction requirements of the rulemaking. That is, the rulemaking required the States to achieve specified levels of emissions reductions—the levels achievable if States implemented the control strategies that EPA identified

[13] In the NO_X SIP Call, because the same criteria applied, the discussion of the "contribute significantly to nonattainment" test generally also applied to the "interfere with maintenance" test. However, in the NO_X SIP Call, EPA stated that the "interfere with maintenance" test applied with respect to only the 8-hour ozone NAAQS (63 FR 57379–80).

[14] Although EPA's air quality modeling techniques examined all of the upwind State's emissions of ozone precursors (including VOC and NO_X), only the NO_X emissions had meaningful interstate impacts.

as highly cost effective—but the rulemaking did not mandate those highly cost-effective control strategies, or any other control strategy. Indeed, in calculating the amount of the required emissions reductions by assuming the implementation of highly cost-effective control strategies, EPA assured that other control strategies—ones that were cost effective, if not highly cost effective—remained available to the States.

(II) Determination of Highly Cost-Effective Amount

The EPA determined the dollar amount considered to be highly cost effective by reference to the cost effectiveness of recently promulgated or proposed NO_X controls. The EPA determined that the average cost effectiveness of controls in the reference list ranged up to approximately $1,800 per ton of NO_X removed (1990$), on an annual basis. The EPA considered the controls in the reference list to be cost effective.

The EPA established $2,000 (1990$) in average cost effectiveness for summer ozone season emissions reductions as, at least directionally, the highly cost-effective amount. Identifying this amount on an ozone season basis was appropriate because the NO_X SIP Call concerned the ozone standard, for which emissions reductions during only the summer ozone season are necessary. This level of costs reflected the fact that in general, States with downwind ozone nonattainment areas had already implemented extensive controls. Accordingly, it was evident that the level of upwind controls EPA selected would prove necessary for the downwind areas to reach attainment.

(III) Source Categories

The EPA then determined that the source categories for which highly cost-effective controls were available included EGUs, large industrial boilers and turbines, and cement kilns. At the same time, EPA determined, for those source categories, the level of controls that would cost an amount consistent with the highly cost-effective amount and that would be feasible. The EPA considered other source categories, but found that highly cost-effective controls were not available from them for various reasons, including the size of the sources, the relatively small amount of emissions from the sources, or the control costs.

iii. Other Factors

The EPA also relied on several other, secondary considerations before concluding that the identified amount of emissions reductions were required. The first concerned the consistency of regional reductions with downwind attainment needs. The EPA ascertained the ozone air quality impacts of the required emissions reductions, and determined that those impacts improved air quality downwind, but not to the point that would raise questions about whether the amount of reductions was more than necessary (63 FR 57379).

The second general consideration was "the overall fairness of the control regimes" to which the downwind and upwind areas were subject. The EPA explained:

> Most broadly, EPA believes that overall notions of fairness suggest that upwind sources which contribute significant amounts to the nonattainment problem should implement cost-effective reductions. When upwind emitters exacerbate their downwind neighbors' ozone nonattainment problems, and thereby visit upon their downwind neighbors additional health risks and potential clean-up costs, EPA considers it fair to require the upwind neighbors to reduce at least the portion of their emissions for which highly cost-effective controls are available.
>
> In addition, EPA recognizes that in many instances, areas designated as nonattainment under the 1-hour NAAQS have incurred ozone control costs since the early 1970s. Moreover, virtually all components of their NO_X and VOC inventories are subject to SIP-required or Federal controls designed to reduce ozone. Furthermore, these areas have complied with almost all of the specific control requirements under the CAA, and generally are moving towards compliance with their remaining obligations. The CAA's sanctions and FIP provisions provide assurance that these remaining controls will be implemented. By comparison, many upwind States in the midwest and south have had fewer nonattainment problems and have incurred fewer control obligations.

(63 FR 57379.)

The third general consideration was "general cost considerations." The EPA noted that "in general, areas that currently have, or that in the past have had, nonattainment problems * * * have already incurred ozone control costs." The next set of controls available to these nonattainment areas would be more expensive than the controls available to the upwind areas. The EPA found that this cost scenario further confirmed the reasonableness of the upwind control obligations (63 FR 57379).

In the NO_X SIP Call, EPA considered all of these factors together in determining the level of controls considered to be highly cost effective. This level of controls reflected the then-present state of ozone controls: Within the region, the nonattainment areas were already required to—and had already implemented—VOC and NO_X controls that covered much of their inventory. However, the upwind States in the region generally had not done so (except to the extent of their ozone nonattainment areas). In this context, EPA considered it reasonable to impose an additional control burden on the upwind States. Air quality modeling showed that even with this additional level of upwind controls, residual nonattainment remained, so that further reductions from downwind and/or upwind areas would be necessary.

b. Regulatory Requirements

After ascertaining the controls that qualified as highly cost effective, EPA developed a methodology for calculating the amount of NO_X emissions that each State was required to reduce on grounds that those emissions contribute significantly to nonattainment downwind. The total amount of required NO_X emissions reductions was the sum of the amounts that would be reduced by application of highly cost-effective controls to each of the source categories for which EPA determined that such controls were available (63 FR 57378).

The largest of these source categories was EGUs. The EPA determined the amount of reductions associated with EGU controls by applying the control rate that EPA considered to reflect highly cost-effective controls to each State's EGU heat input. That heat input, in turn, was adjusted to reflect projected growth.

Each affected State retained the authority to achieve the required level of reductions by implementing whatever controls on whatever sources it wished, and EPA determined that there were other source categories for which cost-effective, if not highly cost-effective, controls were available (63 FR 57378). If the States chose to control EGUs, then the NO_X SIP Call mandated certain requirements—including a statewide cap on EGU NO_X emissions—but also made available an EPA-administered regionwide EGU allowance trading program that the States could choose to adopt.

c. SIP Submittal and Implementation Requirements

At the time EPA promulgated the NO_X SIP Call, States already had SIPs for the 1-hour ozone NAAQS in place. In the NO_X SIP Call, EPA determined that the 1-hour SIPs for the affected States were deficient, and EPA called on these States, under CAA section 110(k)(5), to submit, within 12 months of promulgation of the NO_X SIP Call, SIP revisions to cure the deficiency by complying with the NO_X SIP Call

regulatory requirements. The EPA further required that the NO_X SIP Call-required controls be implemented as expeditiously as practicable. The EPA determined this date to be within 3 years of the SIP submittal date (with that period extended to the beginning of the next ozone season), in light of the various constraints that EGUs would confront in implementing controls.

For the SIPs due under the 8-hour ozone NAAQS, in the NO_X SIP Call, EPA did not incorporate a section 110(k)(5) SIP call, but instead required States to submit, under section 110(a)(1)–(2), SIP revisions to fulfill the requirements of section 110(a)(2)(D). The EPA required these 8-hour ozone SIPs to be submitted—and the controls mandated therein to be implemented—on the same schedule as the 1-hour SIPs.

However, EPA stayed the 8-hour ozone requirements of the NO_X SIP Call, due to litigation concerning the 8-hour ozone NAAQS. To date, EPA has not lifted that stay.

3. *Michigan* v. *EPA* Court Case

Petitioners brought legal challenges to various components of the NO_X SIP Call's analytical approach in the United States Court of Appeals for the District of Columbia Circuit, in *Michigan* v. *EPA*, 213 F.3d 663 (DC Cir., 2000), *cert. denied*, 532 U.S. 904 (2001). The Court upheld the essential features of the air quality modeling part of EPA's approach, *id.* at 673; as well as EPA's definition of "contribute significantly" to include the factor of highly cost-effective controls, *id.* at 679. The Court did vacate or remand certain specific applications of EPA's approach, and delayed the implementation date to May 31, 2004. *See, e.g., id.* at 67, 681–85, 692–94. In addition, in a subsequent case that reviewed separate EPA rulemakings making technical corrections to the NO_X SIP Call, the DC Circuit remanded for a better explanation EPA's methodology for computing the growth component in the EGU heat input calculation. *Appalachian Power Co.* v. *EPA*, 251 F.3d 1026 (DC Cir., 2001).[15]

4. Implementation of the NO_X SIP Call

The court decisions left intact most of the NO_X SIP Call requirements. All States subject to those requirements—which EPA has termed the NO_X SIP Call Phase I requirements—submitted SIPs incorporating them, and requiring control implementation by May 31, 2004 or earlier. The EPA has approved those SIPs.

The EPA responded to the DC Circuit's EGU growth remand decisions through a **Federal Register** action that provided a more detailed explanation and other supporting information for the EGU growth methodology (67 FR 21868; May 1, 2002). The Court subsequently upheld that explanation. *West Virginia* v. *EPA*, 362 F.3d 861 (DC Cir. 2004). In addition, by action dated April 21, 2004, EPA promulgated a rulemaking that responded to other remanded and vacated issues, and included the remaining requirements—termed the NO_X SIP Call Phase II requirements—for the affected States (69 FR 21604).

B. How Does EPA Interpret the Clean Air Act's Pollution Transport Provisions in Today's Rule?

1. CAIR Analytical Approach

Today, EPA adopts much the same interpretation and application of section 110(a)(2)(D) for regulating downwind transport of precursors of $PM_{2.5}$ and 8-hour ozone as EPA adopted for the NO_X SIP Call. We are adjusting some aspects of the NO_X SIP Call analytic approach for various reasons, including the need to account for regulation of a different pollutant ($PM_{2.5}$) with an additional precursor (SO_2).

a. Nature of Nonattainment Problem and Overview of Today's Approach

As described in section I, above, the interstate transport component of current nonattainment of the $PM_{2.5}$ and 8-hour ozone NAAQS is primarily confined to the eastern part of the country, although in an area that is larger, by several States, than the area that EPA focused on in the NO_X SIP Call for only ozone. As described in section III, it is evident that local controls alone cannot be counted on to solve the nonattainment problems, although uncertainties remain in the state of knowledge of these nonattainment problems as well as the precise role interstate and local controls should play. As in the case of the NO_X SIP Call, it is not reasonable to expect a local area to bear the entire burden of solving the air quality problems, even if doing so were technically possible.

Turning to the interstate component of the nonattainment problems, as discussed in section III below, for $PM_{2.5}$, we find sufficient information is available to address the adverse downwind impacts caused by SO_2 and NO_X, and to develop emissions reductions requirements for SO_2 and NO_X. However, we do not have sufficient information to address other precursors. As discussed in section III below, for 8-hour ozone, we reiterate the finding of the NO_X SIP Call that NO_X emissions, and not VOC emissions, are of primary importance for interstate transport purposes.

We interpret CAA section 110(a)(2)(D) to require SIPs in upwind States to eliminate the amounts of emissions that contribute significantly to downwind nonattainment or interfere with downwind maintenance. As described below, in today's rule, EPA determines that upwind States' emissions contribute significantly to nonattainment or interfere with maintenance of the $PM_{2.5}$ NAAQS.

To quantify the amounts of those emissions that contribute significantly to nonattainment, we primarily focus on the air quality factor reflecting the upwind State's ambient impact on downwind nonattainment areas, and the cost factor of highly cost-effective controls. However, as with the NO_X SIP Call, EPA also considers other factors, which serve to establish the broad context for applying the air quality and cost factors. Today, we adopt the formulation of those factors as described in the CAIR NPR, which has little conceptual difference from EPA's application of those factors in the NO_X SIP Call.

Discussion of issues relating to maintenance are found in section III below.

b. Air Quality Factor

i. $PM_{2.5}$

With respect to the $PM_{2.5}$ NAAQS, as described in section VI, we employed air quality modeling techniques to assess the impact of each upwind State's entire inventory of anthropogenic SO_2 and NO_X emissions on downwind nonattainment and maintenance. For air quality and technical reasons described below, EPA determined that upwind SO_2 and NO_X emissions contribute significantly to nonattainment as of the year 2010. Therefore, EPA projected SO_2 and NO_X emissions to the year 2010, assuming certain required controls (but not controls required under CAIR), and then modeled the impact of those projected emissions (termed the base case inventory) on downwind $PM_{2.5}$ nonattainment in that year.

As discussed in section III, we adopt today a threshold air quality impact of 0.2 $\mu g/m^3$, so that an upwind State with contributions to downwind nonattainment below this level would

[15] By action dated January 18, 2000, EPA promulgated another rulemaking that was related to the NO_X SIP Call, known as the section 126 Rule (65 FR 2675). The DC Circuit generally upheld this rule, although it remanded for better explanation the EGU heat input growth methodology. *Appalachian Power Co.* v. *EPA*, 249 F. 3d 1032 (DC Cir., 2001).

not be subject to regulatory requirements, but a State with contributions at or higher than this level would be subject to further evaluation.

Because of the inherent differences between the $PM_{2.5}$ and ozone NAAQS, this threshold necessarily differs from the threshold chosen for the NO_X SIP Call in terms of: (i) The metrics selected to evaluate the threshold, and (ii) the specific level of the threshold. Even so, the threshold EPA proposed for $PM_{2.5}$ is generally consistent with the approach taken in the NO_X SIP Call for the threshold level for ozone in that both are relatively low. This level reflects the fact that $PM_{2.5}$ nonattainment, like ozone, is caused by many sources in a broad region, and therefore may be solved only by controlling sources throughout the region. As with the NO_X SIP Call, the collective contribution condition of $PM_{2.5}$ air quality is reflected in the proposed relatively low threshold.[16]

The EPA determined that as of 2010, 23 upwind States and the District of Columbia will have contributions to downwind $PM_{2.5}$ nonattainment areas that are sufficiently high to meet the air quality factor of the transport test.

ii. 8-Hour Ozone

With respect to the 8-hour ozone NAAQS, we also employed, as described in section VI, air quality modeling techniques to assess the impact of each upwind State's entire inventory of NO_X and VOC emissions on downwind nonattainment. The EPA determined that upwind NO_X emissions contribute significantly to 8-hour ozone nonattainment as of the year 2010. Therefore, EPA projected NO_X emissions to the year 2010, assuming certain required controls (but not controls required under CAIR), and then modeled the impact of those projected emissions (termed the base case inventory) on downwind 8-hour ozone nonattainment in that year.

For the 8-hour ozone air quality factor, EPA employs the same threshold amounts and metrics that it used in the NO_X SIP Call. That is, as described in section VI, emissions from an upwind State contribute significantly to nonattainment if the maximum contribution is at least 2 parts per billion, the average contribution is greater than one percent, and certain other numerical criteria are met.

[16] The second air quality factor described in the NO_X SIP Call—the extent of downwind nonattainment—is reflected in the identification of downwind $PM_{2.5}$ nonattainment areas, discussed elsewhere in today's final action. The third air quality factor—the ambient impact of upwind emissions—is reflected in the threshold level.

The EPA determined that as of 2010, 25 upwind States and the District of Columbia will have contributions to downwind nonattainment areas that are sufficiently high to meet the air quality factor of the transport test.

c. Cost Factor

The second major factor that EPA applies is the cost factor. As in the case of the NO_X SIP Call, EPA interprets this factor as mandating emissions reductions in amounts that would result from application of highly cost-effective controls. We ascertain the level of costs as highly cost effective by reference to the cost effectiveness of recent controls. As we stated in the CAIR NPR, in determining the appropriate level of controls, we considered feasibility issues—as we did in the NO_X SIP Call—specifically, "the applicability, performance, and reliability of different types of pollution control technologies for different types of sources; * * * and other implementation costs of a regulatory program for any particular group of sources." (*See* CAIR NPR, 69 FR 4585.)

As described in section IV, today we conclude that at present, EGUs are the only source category for which highly cost-effective SO_2 and NO_X controls are available. In making this determination, we examined what information is available concerning which source categories emit relatively large amounts of emissions, and what difficulties sources have in implementing controls. These criteria are similar to those considered in the NO_X SIP Call.

As discussed in section IV, for $PM_{2.5}$, today's action finalizes our proposal to identify as highly cost effective the dollar amount of cost effectiveness that falls near the low end of the reference range for both annual SO_2 controls and annual NO_X controls. We identify this level based on the overall context of the $PM_{2.5}$ implementation program, discussed below.

For upwind States affecting downwind 8-hour ozone nonattainment areas, we apply the cost factor for ozone-season NO_X controls in much the same manner as for the NO_X SIP Call, although some aspects of the analysis have been updated. The level of NO_X control identified as highly cost effective is more stringent than in the NO_X SIP Call.

d. Other Factors

As with the NO_X SIP Call, EPA considers other factors that influence the application of the air quality and cost factors, and that confirm the conclusions concerning the amounts of emissions that upwind States must eliminate as contributing significantly to downwind nonattainment. Specifically, as we stated in the CAIR NPR, "We are striving in this proposal to set up a reasonable balance of regional and local controls to provide a cost effective and equitable governmental approach to attainment with the NAAQS for fine particles and ozone." (See 69 FR 4612.) In this manner, we broadly incorporate the fairness concept and relative-cost-of-control (regional costs compared to local costs) concept that we generally considered in the NO_X SIP Call.

i. $PM_{2.5}$ Controls

For $PM_{2.5}$, we promulgated the NAAQS in 1997, we issued designations of areas in December 2004 (70 FR 944; January 5, 2005), and we intend to promulgate implementation requirements during 2005. We project that by 2010, without CAIR or other controls not already adopted, 80 counties in the CAIR region would be in nonattainment of the annual standard.

Our state of knowledge is incomplete as to the best control regime to achieve attainment and maintenance of this NAAQS in individual areas, but we do know that transported SO_2 and NO_X emissions are important contributors to $PM_{2.5}$ nonattainment. In addition, we have concluded that available controls for at least the portion of these emissions from EGUs are feasible and relatively inexpensive on a cost-per-ton basis, and generate significant ambient benefits. These ambient benefits include bringing many areas into attainment and decreasing $PM_{2.5}$ levels in the rest of the nonattainment areas. Moreover, available information indicates that local controls are likely to be relatively more expensive on a per-ton basis, and will not reduce emissions sufficiently to bring many areas into attainment.

In light of this information, we plan to proceed by requiring the level of regulatory control specified today on upwind SO_2 and NO_X emissions. We consider today's action to be both prudent and effective within the circumstances of the developing $PM_{2.5}$ implementation program. This action is one of the initial steps in implementing the $PM_{2.5}$ NAAQS. States, localities, and Tribes, as well as EPA, will continue to evaluate the efficacy of local controls. Finally, as discussed in section VI, air quality modeling confirms that these regional controls are not more than is necessary for downwind areas to attain.

This overall plan is well within the ambit of EPA's authority to proceed with regulation on a step-by-step basis. The time frame for section 110(a)(2)(D) SIPs, described in section VII, makes clear that EPA has the authority to

establish the upwind reduction obligations before having full information about how best to achieve attainment goals, including having full information about downwind control costs and the efficacy of downwind control measures.

ii. Ozone Controls

The EPA determined the level of required NO_X reductions for purposes of 8-hour ozone transport through much the same process as for purposes of $PM_{2.5}$ transport.

e. Regulatory Requirements

i. Annual SO_2 and NO_X Emissions Reductions

Although EPA determined that upwind emissions will contribute significantly to both $PM_{2.5}$ nonattainment and 8-hour ozone nonattainment in 2010, the amount of requisite emissions controls cannot feasibly be implemented by 2009 for NO_X, or 2010 for SO_2. Instead, EPA has determined to implement the reductions in two phases for each pollutant: 2009 for NO_X, and 2010 for SO_2 initially, with lower caps for both in 2015.

As described in section IV, EPA evaluated the cost of emissions reductions under consideration against the level of highly cost-effective controls. Through a multi-year process involving studies and other regulatory and legislative efforts, as well as involvement with citizen, industry, and State stakeholders, EPA arrived at an amount of SO_2 emissions reductions for evaluation purposes for the CAIR region. The EPA ascertained the costs of these reductions and today determines that they should be considered highly cost effective. These amounts correspond to reducing Title IV SO_2 allowances for utilities by 65 percent in 2015 and 50 percent in 2010 in CAIR States.

As described in section V, EPA further determined that these emissions reductions requirements should be allocated to the States in proportion to the title IV SO_2 allowances allocated under the CAA to their EGUs. This approach is consistent with the system Congress established for allocating title IV allowances and facilitates implementation of the SO_2 interstate trading program.

For annual NO_X emissions, EPA determined a target regionwide amount of both emissions reductions and the EGU budget by multiplying current heat input by emission rates of 0.125 lb/mmBtu and 0.15 lb/mmBtu for 2015 and 2010, respectively. The EPA then evaluated those amounts through the Integrated Planning Model (IPM), which indicated the associated amounts of heat input and emission rates projected for those years. The IPM indicated that the amounts of heat input for 2015 and 2010 were higher than current heat input (in light of the increased electricity demand for 2015 and 2010), and that the emissions rates were lower than 0.125 lb/mmBtu (2015) and 0.15 lb/mmBtu (2010). The IPM calculated the costs to achieve those emissions reductions and EGU budget (assuming EGU controls) by 2015 and 2009, which costs EPA determined were highly cost effective and feasible, respectively. The EPA used this same approach to determine the seasonal budget for NO_X reductions for purposes of the ozone standard.

As described in section V, we allocated this regionwide amount to the individual States in accordance with their average heat input from EGUs both subject to and not subject to title IV. We adjusted heat input for type of fuel used. The EPA believes that this method is a reasonable indicator of each State's appropriate share of the requirements. This method differs from what EPA used in the NO_X SIP Call, which relied on State-specific projections of growth in heat input.

We require implementation of the $PM_{2.5}$ and 8-hour ozone reductions in two phases, in 2009 and 2015. As discussed in section IV, these dates are the most expeditious that are practicable—the same standard for the implementation period in the NO_X SIP Call—based on engineering and financial factors; the performance and applicability of control measures; and the impact of implementation on, in the case of EGUs, electricity reliability. The EPA considered these same factors in determining the implementation period for the NO_X SIP Call requirements, but factual differences lead to the two-phase approach adopted in today's action.

As discussed in section VII, each upwind State may achieve the required reductions by regulating any sources of SO_2 or NO_X that it wishes. However, if the State chooses to regulate certain source categories (such as EGUs), it must comply with certain requirements (such as capping EGU emissions), and it may take advantage of certain opportunities (such as participation in the EPA-administered EGU cap and trade program). Some aspects of these requirements and the cap and trade program differ from those in the NO_X SIP Call, as explained in section VIII. However, like the NO_X SIP Call, the State may allow sources to opt in to the CAIR trading program, as described in section VIII.

f. SIP Submittal and Implementation Requirements

Today EPA requires that the $PM_{2.5}$ and 8-hour ozone SIPs be submitted within 18 months of promulgation of today's action. This period is 6 months longer than the SIPs due under the NO_X SIP Call. This difference is due to the fact that $PM_{2.5}$ implementation is only now beginning, and it makes sense to keep the NO_X SIPs due under the 8-hour ozone requirements on the same schedule as the NO_X and SO_2 SIPs due under the $PM_{2.5}$ requirements.

2. What Did Commenters Say and What Is EPA's Response?

Many of the comments on today's action concern various aspects of EPA's analytical approach. Most of those comments are discussed elsewhere in today's action. Comments on the most basic elements of EPA's approach are discussed here.

a. Aspects of Contribute-Significantly Test

i. Date for Evaluation of Downwind Impacts

Comment: Some commenters took issue with EPA's approach of determining the upwind State's air quality impact on downwind areas by modeling only the State's 2010 base case emissions (that is, projected 2010 emissions before the 2010 CAIR controls). These commenters stated that although evaluating the upwind State's base case emissions in 2010 might indicate whether that State's air quality impact on downwind areas is sufficiently high to justify imposition of the 2010 (Phase I) controls, it does not justify imposition of the 2015 (Phase II) controls. Rather, according to the commenters, EPA should conduct further air quality modeling that evaluates the upwind State's 2015 base case emissions—taking into account the CAIR 2010 controls but not the CAIR 2015 controls—to determine whether the State continues (even after imposition of the CAIR 2010 controls) to have a sufficient downwind ambient impact to justify the 2015 controls.

Commenters added that, in their view, $PM_{2.5}$ precursors generally were decreasing after 2010, the $PM_{2.5}$ nonattainment problem was generally diminishing as well, and the contribution of some upwind States to downwind areas was relatively small. These facts, according to the commenters, indicated that some upwind States should not be subject to the 2015 reductions requirement.

Some commenters stated, more broadly, that the threshold contribution

level selected by EPA should be considered a floor, so that upwind States should be obliged to reduce their emissions only to the level at which their contribution to downwind nonattainment does not exceed that threshold level.

Response: The EPA views the CAIR emission reduction requirements as a single action, but one that cannot be fully implemented in 2009 (for NO_X) or 2010 (for SO_2), and must instead be partially deferred until 2015, solely for reasons of feasibility. Under these circumstances, EPA does not believe it appropriate to re-evaluate the 2015 component, as commenters have suggested.

Under EPA's approach, which mirrors that of the NO_X SIP Call, EPA projects, for each upwind State, SO_2 and NO_X inventories, as of 2010, taking into account controls required under other CAA provisions and controls adopted by State and local agencies. The EPA then uses air quality modeling techniques to determine the impact of these emissions on downwind air quality. The EPA then requires upwind States whose emissions have a sufficiently high impact to eliminate the amount of their emissions that could be eliminated through application of highly cost-effective controls. These emissions reductions must be implemented as expeditiously as practicable. Were it feasible to implement all the reductions by 2009 (for NO_X) or 2010 (for SO_2), EPA would so require. Because part of the emissions reductions cannot feasibly be implemented until 2015, EPA is requiring today's two-phase approach. This analytic method is the same as for the NO_X SIP Call, except that in that rulemaking all of the required emissions reductions could feasibly be implemented in one phase.

As in the case of the NO_X SIP Call, EPA takes the view that once a State's emissions are determined to contribute to downwind nonattainment by at least a threshold amount, then the upwind State should reduce its emissions by the amount that would result from implementation of highly cost-effective controls. This approach is justified by the benefits of reducing the upwind contribution to downwind nonattainment, coupled with the relatively low costs. However, EPA does consider the ambient impacts of the required emissions reductions. For today's action, air quality modeling indicates that the regionwide emissions reductions do not reduce $PM_{2.5}$ levels beyond what is needed for attainment and maintenance. (See also section III below.) Most important for present purposes, as long as the controls yield downwind benefits needed to reduce the extent of nonattainment, the controls should not be lessened simply because they may have the effect of reducing the upwind State's contribution to below the initial threshold.

The DC Circuit, in upholding the NO_X SIP Call, rejected similar arguments to those raised by commenters (*Michigan* v. *EPA*, 213 F.3d at 679). In the NO_X SIP Call rulemaking, commenters argued that EPA's analytic approach to the "contribute significantly" test was flawed because it meant that States with different impacts downwind would nevertheless have to implement the same level of controls (*i.e.*, those that were highly cost effective). Commenters urged EPA to recast its approach by limiting an upwind State's emissions reductions to the point at which the remaining emissions no longer caused a downwind ambient impact above the threshold level for significance. ("Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone (62 FR 60318; November 7, 1997 and 63 FR 25902; May 11, 1998)," U.S. E.P.A. (September 1998), Docket Number A–96–56–VI–C–1, at 213–16.)

Petitioners challenging the NO_X SIP Call in *Michigan* v. *EPA* used the same arguments to contend that EPA's analytic approach in the NO_X SIP Call was arbitrary and capricious. The Court dismissed these arguments, stating:

> * * * EPA required that all of the covered jurisdictions, regardless of amount of contribution, reduce their NO_X by an amount achievable with "highly cost-effective controls." Petitioners claim that EPA's uniform control strategy is irrational. * * * [T]hey observe that where two states differ considerably in the amount of their respective NO_X contributions to downwind nonattainment, under the EPA rule even the small contributors must make reductions equivalent to those achievable by highly cost-effective measures. This of course flows ineluctably from the EPA's decision to draw the "significant contribution" line on a basis of cost differentials. Our upholding of that decision logically entails upholding this consequence.

(*Michigan* v. *EPA*, 213 F.3d at 679.)

Thus, the Court approved EPA's approach of requiring the same control level on all affected States, without concern as to the arguably inconsistent ambient impacts that may result. By the same token, in today's action, EPA's approach should be accepted notwithstanding that the upwind controls could, at least in theory, result in an ambient impact that is below the initial threshold. For this reason, there is no basis to conduct a separate evaluation of the 2015 controls.

ii. Residual Nonattainment

Comment: A commenter expressed concern that too many areas will remain out of attainment for the $PM_{2.5}$ and 8-hour ozone NAAQS even after implementation of the CAIR rule.

Response: Section 110(a)(2)(D) of the CAA requires upwind States to prohibit the amount of emissions that contribute significantly to downwind nonattainment, but does not require the upwind States to prohibit sufficient emissions to assure that the downwind areas attain. Rather, downwind areas continue to bear the responsibility of addressing remaining nonattainment.

iii. Relationship of Reductions to Attainment Dates

Comment: Some commenters, who viewed the CAIR as imposing unduly light obligations on upwind States, argued that because States with nonattainment areas must develop SIPs that provide for attainment regardless of the cost of the requisite controls, and because the courts have viewed attainment deadlines as central to the CAA, EPA should require that upwind emissions contributing to downwind nonattainment must be eliminated by the downwind attainment dates, and not later.

Other commenters, who viewed the CAIR as imposing unduly heavy obligations on upwind States, argued that EPA had no authority to require upwind emissions reductions after the downwind attainment dates because by that time, the upwind emissions were no longer contributing to nonattainment. These commenters further argued that EPA has no authority to accelerate the emissions reductions because the controls could not feasibly be implemented by an earlier date.

Response: We note first that part of this issue is moot since EPA is requiring NO_X controls in 2009, within the statutory time periods for attainment. With respect to remaining issues, EPA's interpretation and application of the "contribute significantly to nonattainment" standard of section 110(a)(2)(D) is not necessarily constrained by the downwind area's attainment date in either manner suggested by the commenters.

First, although it is true that the nonattainment area requirements and deadlines in CAA title I, part D, mean that the downwind area must achieve attainment by its attainment date

without regard to the feasibility of emissions reductions from sources in that nonattainment area, section 110(a)(2)(D) by its terms does not apply those constraints to sources in the upwind States. Rather, EPA's interpretation of the "contribute significantly to nonattainment" standard—which incorporates feasibility considerations in determining the implementation period for the upwind emissions controls—continues to apply.

Often, upwind emissions reductions affect at least several downwind areas with different attainment dates. The EPA does not read section 110(a)(2)(D) to require that the pace of upwind reductions be controlled by the earliest downwind attainment date. Rather, EPA views the pace of reductions as being determined by the time within which they may feasibly be achieved. In some cases, upwind sources are themselves in a nonattainment area that has a longer attainment date than the downwind area, and it may not be feasible for those upwind sources to implement reductions prior to the downwind attainment date. Therefore, the upwind emissions may be projected to continue to affect adversely nonattainment in the downwind area even after the downwind attainment date, in the manner described above. Further, emissions reductions after the attainment date may be important to prevent interference with maintenance of the standards.

The CAIR will achieve substantial reductions in time to help many nonattainment areas attain the standards by the applicable attainment dates. The design of the SO_2 program, including the declining caps in 2010 and 2015 and the banking provisions, will steadily reduce SO_2 emissions over time, achieving reductions in advance of the cap dates; and the 2009 and 2015 NO_X reductions will be timely for many downwind nonattainment areas. Although many of today's nonattainment areas will attain before all the reductions required by CAIR will be achieved, it is clear that CAIR's reductions will still be needed through 2015 and beyond. The EPA has determined that each upwind State's 2010 and 2015 emissions reductions will be necessary because, for purposes of both $PM_{2.5}$ and 8-hour ozone, we reasonably predict that a downwind receptor linked to that upwind State will either: (i) Remain in nonattainment and continue to experience significant contribution to nonattainment from the upwind State's emissions; or (ii) attain the relevant NAAQS but later revert to nonattainment due, for example, to continued growth of the emissions inventory. This is discussed in detail in section III below.

iv. Factors To Consider in Future Rulemaking

In the January and June CAIR proposals, we discussed regional control requirements and budgets based on a showing of "significant contribution" by upwind States to nonattainment in downwind States (69 FR at 4611–13, 32720). The CAA section 110(a)(2)(D), which provides the authority for CAIR, states among other things that SIPs must contain adequate provisions prohibiting, consistent with the CAA, sources or other types of emissions activity within a State from emitting pollutants in amounts that will "contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to" the NAAQS. In the CAIR, EPA has interpreted section 110(a)(2)(D) to require that certain States reduce emissions by specified amounts, and has determined those amounts based on the availability of highly cost effective controls for identified source categories. Following this interpretation, EPA has calculated CAIR's emissions reduction requirements based on the availability of highly cost-effective reductions of SO_2 and NO_X from EGUs in States that meet EPA's proposed inclusion criteria.

One approach cited in the January 2004 CAIR proposal for ensuring that both the air quality component and the cost effectiveness component of the section 110 "contribute significantly" determination is met, is to consider a source category's contribution to ambient concentrations above the attainment level in all nonattainment areas in affected downwind states. *Id.* In the June supplemental proposal, we requested comment on a further refinement of this concept—*i.e.*, whether a source category should be included in a broad regional rule promulgated pursuant to section 110(a)(2)(D) only if the proposed level of additional control of that category would meet a specified threshold. Under that approach, EPA said it might determine, for example, that in the context of a broad multi-state SIP call, emissions reductions from particular source category are "highly cost effective" only if emissions reductions from that source category would result in at least 0.5 percent of U.S. counties and/or parishes coming into attainment with a NAAQS. The EPA noted that, given the number of counties and parishes in the United States, this requirement would be met if at least 16 counties were brought into attainment with a NAAQS as a result of the proposed level of control on a particular source category.

The Agency received comments both supporting and opposing the adoption of this test as a part of the "highly cost effective" component of the "contribute significantly" requirement of CAA section 110(a)(2)(d). Commenters supporting this test asserted that it was consistent with the CAA's overall focus on State, rather than federal, control over which sources should be regulated, and also was consistent with ensuring that broad, regional SIP calls, such as the one at issue in this case, focus only on source categories the control of which will result in substantial overall improvements in air quality. Commenters opposing this screen with respect to the application of section 110(a)(2)(D) asserted, in general, that the test would be inconsistent with the analysis used by the Agency in the NO_X SIP call and with the language of section 110(a)(2)(D).

We have determined that it is not appropriate to adopt a statutory interpretation embodying a "bright line" rule that 0.5 percent of the U.S. counties and/or parishes must be brought from nonattainment into attainment from controlling emissions from a particular source category, in order for reductions from that source category to be considered highly cost effective. We continue to believe, however, that broad multi-state rules under section 110(a)(2)(D), such as the one we are finalizing today, should play a limited role under the CAA and must be justified by a careful evaluation of the air quality improvement that will result from the controls under consideration. Therefore, we intend to undertake any future broad, multi-state rulemakings under section 110(a)(2)(D) regarding transported emissions only when, as here, they produce substantial air quality benefits across a broad area and have beneficial air quality impacts on a significant number of downwind nonattainment areas, including bringing many areas into attainment. We do not at this time anticipate the need for any such rulemakings in the future. We believe that today's action, coupled with current and upcoming national rules and local or subregional programs adopted by States, will be sufficient to address the remaining nonattainment problems.

In evaluating whether to undertake national or regional transport rulemakings in the future, we believe it is not only appropriate but necessary to consider the effectiveness of the proposed emissions reductions in improving downwind air quality. We

believe it will be reasonable to initiate a broad multi-state rulemaking under section 110(a)(2)(D) based on a determination that particular emissions reductions are highly cost effective only when those reductions will bring a significant number of downwind areas into attainment. In adopting this approach for determining whether a future broad, multi-state SIP call is appropriate, we note that other CAA mechanisms, such as SIP disapproval authority and State petitions under section 126, are available to address more isolated instances of the interstate transport of pollutants.

The EPA projects that control of SO_2 and NO_X through CAIR will bring 72 counties into attainment with the $PM_{2.5}$ and ozone NAAQS. The total number represents approximately 3 percent of the counties/parishes in the United States, and is clearly a significant number of areas. What will be considered a significant number of areas in any future cases will need to be determined on a case-by-case basis.

III. Why Does This Rule Focus on SO_2 and NO_X, and How Were Significant Downwind Impacts Determined?

This section discusses the basis for EPA's decision to require reductions in upwind emissions of SO_2 and NO_X to address $PM_{2.5}$ transport and to require reductions in upwind emissions of NO_X to address ozone-related transport. In addition, this section discusses how EPA determined which States are subject to today's rule because their sources' emissions will significantly contribute to nonattainment of the $PM_{2.5}$ or 8-hour ozone standards, or interfere with maintenance of those standards, in downwind States. The EPA assessed individual upwind States' ambient impacts on downwind States and established a threshold value to identify those States whose impact constitutes a significant contribution to air quality violations in the downwind States. The EPA used air quality modeling of emissions in each State to estimate the ambient impacts. The technical issues concerning the modeling platform and approach are discussed in section VI, Air Quality Modeling Approach and Results. Also, EPA considered the potential for upwind state emissions to interfere with maintenance of the $PM_{2.5}$ and 8-hour ozone NAAQS in downwind areas.

A. What Is the Basis for EPA's Decision To Require Reductions in Upwind Emissions of SO_2 and NO_X To Address $PM_{2.5}$ Related Transport?

1. How Did EPA Determine Which Pollutants Were Necessary To Control To Address Interstate Transport for $PM_{2.5}$?

a. What Did EPA Propose Regarding This Issue in the NPR?

Section II of the January 2004 proposal summarized key scientific and technical aspects of the occurrence, formation, and origins of $PM_{2.5}$, as well as findings and observations relevant to formulating control approaches for reducing the contribution of transport to fine particle problems (69 FR 4575–87). Key concepts and provisional conclusions drawn from this discussion can be summarized as follows: [17]

(1) Fine particles (measured as $PM_{2.5}$ for the NAAQS) consist of a diverse mixture of substances that vary in size, chemical composition, and source. The $PM_{2.5}$ includes both "primary" particles that are emitted directly to the atmosphere as particles, and "secondary" particles that form in the atmosphere through chemical reactions from gaseous precursors. The major components of fine particles in the Eastern U.S. can be grouped into five categories: carbonaceous material (including both primary and secondary organic carbon and black carbon), sulfates, nitrates, ammonium, and crustal material, which includes suspended dust as well as some other directly emitted materials. The major gaseous precursors of $PM_{2.5}$ include SO_2, NO_X, ammonia (NH_3), and certain volatile organic compounds.

(2) Examination of urban and rural monitors indicate that in the Eastern U.S., sulfates, carbonaceous material, nitrates, and ammonium associated with sulfates and nitrates are typically the largest components of transported $PM_{2.5}$, while crustal material tends to be only a small fraction.

(3) Atmospheric interactions among particulate ammonium sulfates and nitrates and gas phase nitric acid and ammonia vary with temperature, humidity, and location. Both ambient observations and modeling simulations suggest that regional SO_2 reductions are effective at reducing sulfate and associated ammonium, and, therefore, $PM_{2.5}$. Under certain conditions reductions in particulate ammonium sulfates can release ammonia as a gas, which then reacts with gaseous nitric acid to form nitrate particles, a phenomenon called "nitrate replacement." In such conditions SO_2 reductions would be less effective in reducing $PM_{2.5}$, unless accompanied by reductions in NO_X emissions to address the potential increase in nitrates.

(4) Reductions in ammonia can reduce the ammonium, but not the sulfate portion of sulfate particles. The relative efficacy of reducing nitrates through NO_X or ammonia control varies with atmospheric conditions; the highest particulate nitrate concentrations in the East tend to occur in cooler months and regions. At present, our knowledge about sources, emissions, control approaches, and costs is greater for NO_X than for ammonia. Existing programs to reduce NO_X from stationary and mobile sources are well underway. From a chemical perspective, as NO_X reductions accumulate relative to ammonia, the atmospheric chemical system would move towards an equilibrium in which ammonium nitrate reductions become more responsive to further NO_X reductions relative to ammonia reductions.

(5) Much less is known about the sources of regional transport of carbonaceous material. Key uncertainties include how much of this material is due to biogenic as compared to anthropogenic sources, and how much is directly emitted as compared to formed in the atmosphere.

(6) Observational evidence suggests that the substantial reductions in SO_2 emissions in the eastern U.S. since 1990 have indeed caused observed reductions in $PM_{2.5}$ sulfate. The relatively small historical reductions in NO_X emissions do not allow observations to be used similarly to test the effectiveness of NO_X reductions.

Based on the understanding of current scientific and technical information, as well as EPA's air quality modeling, as summarized in the January 30 proposal, EPA concluded that it was both appropriate and necessary to focus on control of SO_2 and NO_X emissions as the most effective approach to reducing the contribution of interstate transport to $PM_{2.5}$.

The EPA proposed not to control emissions that affect other components of $PM_{2.5}$, noting that "current information relating to sources and controls for other components identified

[17] More complete discussions of the key scientific underpinnings that form the basis of these conclusions in the proposal and the discussion of these issues in this seciton of today's notice can be found in the recently completed EPA Criteria Document (USEPA, National Center for Environmental Assessment, Air Quality Criteria for Particulate Matter, October 2004) and the NARTSO assessment of fine participles (NARSTO, Particulate Matter Science for Policy Makers—A NARSTO ASSESSMENT, February 2003).

in transported $PM_{2.5}$ (carbonaceous particles, ammonium, and crustal materials) does not, at this time, provide an adequate basis for regulating the regional transport of emissions responsible for these $PM_{2.5}$ components." (69 FR 4582). For all of these components, the lack of knowledge of and ability to quantify accurately the interstate transport of these components limited EPA's ability to include these components in this rule.

b. How Does EPA Address Public Comments on Its Proposal To Address SO_2 and NO_X Emissions and Not Other Pollutants?

i. Overview of Comments on This Issue

A large number of commenters including states, affected industries, environmental groups, academics, and other members of the public agreed with EPA's proposal to require cost-effective multipollutant reductions of SO_2 and NO_X to address interstate transport contributions to $PM_{2.5}$ problems. Fewer commenters who supported controlling SO_2 and NO_X commented on inclusion of additional pollutants, but several also agreed that it would be premature at this time to require control of emissions of other chemical components and precursors to address such transport. These commenters suggested that SO_2 and NO_X emissions from EGUs and other sources indeed contribute significantly to downwind $PM_{2.5}$. They argued that control of other components is premature because of a lack of knowledge, either about the interstate contributions of other components or of control measures for these components. Generally, EPA accepts and agrees with these conclusions.

A number of commenters disagreed to varying degrees with part or all of EPA's proposed focus on SO_2 and NO_X. The main points raised by these commenters can be grouped as follows:

(1) The focus on SO_2 and NO_X is not appropriate because sulfates and nitrates may not be (or are not) the most important determinants of the health effects of $PM_{2.5}$.

(2) The EPA should mandate, or at least permit, states to control other precursors and particle emissions in addition to, or instead of, SO_2 and NO_X. Commenters sometimes made specific recommendations with respect to additional pollutants, including carbonaceous (including organic) particles and precursors, ammonia, and other direct emissions, including crustal material.

(3) The focus on SO_2 may be appropriate, but the basis for requiring NO_X control is not clear.

ii. Summary of EPA's Response to the Major Comments on This Issue

The following subsections summarize both key comments and EPA's responses organized by the major categories outlined above. As noted in Section I, EPA has developed and placed in the rulemaking docket a detailed response to these and other public comments.

(a) SO_2 and NO_X May Be Less Important to Health Than Other Transport-Related Components

Comment: Several commenters argued that the proposed focus on SO_2 and NO_X was premature, citing the potential for differential toxicity of various $PM_{2.5}$ components, and in some cases advancing evidence (*e.g.*, the Electric Power Research Institute Aerosol Research and Inhalation Studies [ARIES]) [18] that other components such as organic particles appear to be more responsible for health effects of particles than sulfates and nitrates. Several argued that the relative contribution of components to health impacts is an important uncertainty that should be researched more carefully before proposing to control only SO_2 and NO_X.

Response: Today's rulemaking establishes requirements for SIP submissions under section 110(a)(2)(D). Those SIP submissions must prohibit emissions that contribute significantly to nonattainment of a NAAQS in a downwind State. The EPA determined in the 1997 rulemaking promulgating the $PM_{2.5}$ NAAQS that specified levels of $PM_{2.5}$ adversely affect human health, and that sulfates and nitrates are components of $PM_{2.5}$ (62 FR 38652, July 18, 1997). SO_2 and NO_X, in turn, are precursors to fine particulate sulfates and nitrates. Comments that sulfates and nitrates do not cause adverse health effects are more appropriately raised in the context of past or ongoing reviews of the PM NAAQS. Because today's action forms part of implementing and not establishing the PM NAAQS, comments relating to the evidence supporting or not supporting health effects of all or portions of pollutants regulated by the $PM_{2.5}$ NAAQS are not germane to this rulemaking.

Nevertheless, we discuss briefly EPA's current response regarding the contributions of different components of $PM_{2.5}$ to health effects. In establishing the current $PM_{2.5}$ NAAQS, EPA found that there was ample evidence to associate various health effects with the measured mass concentration of particles smaller than a nominal 2.5 micrometers (um), termed $PM_{2.5}$. The EPA recognizes that the toxicity of different chemical components of $PM_{2.5}$ may vary, and that the observed effects may be the result of the mixture of particles and gases. While research is underway to better identify whether some chemical components are more responsible for health effects than others, results now available from such research are limited and inconclusive. A number of studies included in the recent EPA PM criteria document [19] have found effects to be associated with one or more of the major components and sources of $PM_{2.5}$, including sulfates, nitrates, organic materials, $PM_{2.5}$ mass, coal combustion, and mobile sources. The criteria document concludes that these studies suggest that many different chemical components of fine particles and a variety of different types of source categories are all linked to premature mortality and other serious health effects, either independently or in combinations, but that it is not possible to reach clear conclusions about differential effects of PM components. Accordingly, individual studies or groups of studies such as ARIES cannot be used to single out any particular component of $PM_{2.5}$ as wholly responsible (or not at all responsible) for the array of health effects that have been found to be associated with various chemical and mass indicators of fine particles. Other Federal agencies and EPA continue to promote and support the epidemiological and toxicological studies needed to better understand the effects of different chemical components and different size particles on health effects.

In the meantime, EPA believes that, given the substantial evidence of significant health effects of fine particles, it is important to move forward expeditiously to address both transported and local sources of all the major components of fine particles in an effort to implement and attain the $PM_{2.5}$ standards. Today's rule is focused on the contribution of interstate transport of nitrate and sulfates to $PM_{2.5}$ in nonattainment areas. However, EPA has already adopted other rules that are reducing emissions and exposures to these and other major components of fine particles on a national, regional, and local basis. Recent national mobile

[18] R. J. Klemm, *et al.*, "Daily Mortality and Air Pollution in Atlanta: Two Year of Data from ARIES" (accepted, Inhalation Toxicology).

[19] USEPA, National Center for Environmental Assessment, Air Quality Criteria for Particulate Matter, October 2004.

rules and programs, in particular, have focused on carbonaceous materials emitted from gasoline and both highway and non-road diesel powered mobile sources (65 FR 6698; 66 FR 5002; 69 FR 38958). States with nonattainment areas will also be required to address local sources of $PM_{2.5}$ in order to meet progress and attainment requirements. Together, the collective effect of these programs ensures a balanced approach to reducing all of the major components of $PM_{2.5}$ from transported and local sources.

(b) Inclusion of Other $PM_{2.5}$ Precursors and Components

Comment: A number of commenters recommended that EPA either mandate or at least permit controls on the emissions that cause interstate transport of other components of $PM_{2.5}$, in addition to or as a substitute for, SO_2 and NO_X controls. Several commenters recommended that EPA include emissions reductions related to the components of $PM_{2.5}$ other than sulfate and nitrate. While many commenters suggested addressing all of the important contributors to $PM_{2.5}$, including those not regulated under this Rule, others highlighted only one or two additional components as most important to include. Of the $PM_{2.5}$ components, direct emissions and precursors to carbonaceous $PM_{2.5}$ and ammonia emissions were the omitted contributors most frequently discussed.

Some of these commenters argued that, by limiting the rule to SO_2 and NO_X and excluding other sources of ambient $PM_{2.5}$, EPA would be limiting the choices that states have to address their downwind interstate transport contributions. These commenters argued that this limitation is contrary to the CAA, which generally gives states the discretion to choose their own emission control strategies. Commenters further asserted that the roles of other components in $PM_{2.5}$ are sufficiently well understood that they should be included in state SIPs for $PM_{2.5}$ transport, and could partially satisfy the $PM_{2.5}$ reductions anticipated by this rule.

Response: The three main classes of $PM_{2.5}$ precursors that are not included in this rulemaking are carbonaceous material (including both primary emissions and VOC emissions that form secondary organic aerosol), ammonia, and crustal material. As noted in the proposal(69 FR 4576) and as mentioned in several comments, these components comprise a measurable faction of $PM_{2.5}$ throughout the Eastern U.S., and the contribution of carbonaceous material, in particular, is often substantial. In addition, emissions contributing to these components in one state likely do affect $PM_{2.5}$ concentrations in other states to some extent. However, the extent of those downwind contributions to nonattainment has not been quantified adequately and current scientific understanding makes such a determination more uncertain than is the case for SO_2 and NO_X. Responses to recommendations for including each of these three classes in the transport rule are summarized below.

(i) Carbonaceous Material

For carbonaceous material, uncertainties in both the quantity and origins of emissions contributing to both primary and secondary carbonaceous material on regional scales (including emissions from fires and from biogenic sources) limit the quality of regional scale modeling of carbonaceous $PM_{2.5}$. This in turn causes substantial uncertainties in determining the amount of interstate transport from carbonaceous material and of the costs and effectiveness of emission controls. Modeling and monitoring the relative amount of organic particles that come from the formation of secondary organic particles, versus primary organic particles, is also highly uncertain.

In addition, comparison of urban and nearby rural PM composition monitors [20] in the eastern U.S. find a significantly larger amount of carbonaceous materials in urban areas as compared to rural areas, suggesting that a substantial fraction of carbonaceous particles in urban areas come from local sources. By contrast, urban and non-urban monitors in the East show greater homogeneity for regional sulfate concentrations as compared to carbonaceous materials, suggesting regional sources are most important for sulfates. Results for nitrates suggest both a mixture of regional and local sources. Furthermore, as noted above and in the proposal (69 FR 4577–78), while the relative contributions of different sources to regional sulfate and nitrates can be quantified with certainty, the contributions of different sources to carbonaceous materials on a regional scale are less clear. Moreover, as noted in the NPR preamble, some research into mechanisms of formation of organic particles suggests that both NO_X and SO_2 reductions might be of some benefit in lowering the amount of secondary organic particles.[21] Current models are not, however, capable of quantifying such potential benefits.

While EPA does not believe that enough is known about the relative effectiveness or costs of reducing anthropogenic sources of carbonaceous particles on transported $PM_{2.5}$, EPA agrees that control of known source categories of these materials can have a significant benefit in reducing the significant local contribution. For this reason, EPA has already enacted other national rules that will reduce emissions of primary carbonaceous $PM_{2.5}$ from mobile sources, the largest contributor to such emissions. In addition to reducing $PM_{2.5}$ in nonattainment areas, these regulations will also have the benefit of reducing a large measure of whatever interstate transport of carbonaceous $PM_{2.5}$ occurs.

(ii) Ammonia

While current models are able to address the major chemical mechanisms involving particulate ammonium compounds, regional-scale ammonia emissions, particularly from agricultural sources, are highly uncertain.[22] Given the relative lack of experience in controlling such sources, the costs and effectiveness of actions to reduce regional ammonia emissions are not adequately quantified at present. As noted above, ammonium would not exist in $PM_{2.5}$ if not for the presence of sulfuric acid or nitric acid; hence, decreases in SO_2 and NO_X can be expected ultimately to decrease the ammonium in $PM_{2.5}$ as well. The additional regional limits on SO_2 and NO_X emissions outlined in today's notice added to those reductions provided under current programs would likewise be expected to reduce the $PM_{2.5}$ effectiveness of any ammonia control initiative.[23] Unlike ammonium, sulfuric acid has a very low vapor pressure and would exist in the particle with or without ammonia. Therefore, while SO_2 reductions would reduce particulate ammonium, changes in ammonia would

[20] V. Rao, N. Frank, A. Rush, F. Dimmick. Chemical Speciation of $PM_{2.5}$ in Urban and Rural Area, in The Proceedings of the Air & Waste Management Association Symposium on Air Quality Measurement Methods and Technology, San Francisco, November 13–1, 2002.

[21] Jang, M; Czoschke, N.M.; Lee, S.: Kamens, R.M., Heterogeneous Atmospheric Aerosol Production by Acid-Catalzyed Particle Phase Reactions, Science, 2002, 298: 814–817.

[22] Battye, W., V.P. Aneja, and P.A. Roelle, Evaluation and improvement of ammonia emissions inventories, Atmospheric Environment, 2003, 37: 3873–3883.

[23] As pointed out by one commenter, a hypothetical new program resulting in major regional reductions of ammonia would reduce the effectiveness of NO_X controls. However, given the uncertainties in emissions, the dispersed nature of ammonia sources and the lack of present controls, an effort to develop a new regional ammonia program would likely take significantly longer than the additional NO_X reductions EPA is adopting today.

be expected to have very little effect on the sulfate concentration.

In addition to the above considerations, because ammonium nitrates are highest in the winter, when ammonia emissions are lowest, reducing wintertime NO_X emissions may represent a more certain path towards reducing this winter peak than ammonia reductions. Moreover, reductions in ammonia emissions alone would also tend to increase the acidity of $PM_{2.5}$ and of precipitation. As noted in the proposal, this might have untoward environmental or health consequences.

Some commenters highlighted ammonia as an important pollutant with multiple effects on the environment, including its contributions to $PM_{2.5}$. These commenters highlighted that ammonia emissions are not currently regulated extensively, and suggested that EPA strengthen its efforts to better understand the many effects of ammonia emissions and better research options for controlling ammonia, so that it can be regulated where appropriate in the future programs. Generally, EPA agrees with these commenters.

(iii) Crustal Material

The contributions of crustal materials to $PM_{2.5}$ nonattainment are usually small, and the interstate transport of crustal materials is even smaller. Emissions of crustal materials on regional scales are uncertain, highly variable in space and time, and may not be easily controlled in some cases, suggesting significant uncertainties in quantifying emissions and the costs and effectiveness of control actions. Emissions reductions of SO_2 and NO_X will likely reduce some of the direct emissions of $PM_{2.5}$ from EGUs and other industries, which are responsible for a portion of the "crustal material" measured downwind at receptors.

(c) Summary of Response To Requiring or Allowing Reductions in Other Pollutants

After reviewing public comments in light of the current understanding of alternative pollutants as summarized above, EPA disagrees with those commenters who suggested that the final Clean Air Interstate Rule should require states to address the interstate transport of carbonaceous material (including VOCs), ammonia, and/or crustal material in the present rulemaking.

At present, the sources and emissions contributing to these components on regional scales are not sufficiently quantified. In addition, the representation of atmospheric physics and chemistry for these components in air quality models is in some cases poor in comparison with current understanding of SO_2 and NO_X (most notably for sources and amounts of secondary organic aerosol production.[24] Consequently, quantification of the interstate transport of these components is significantly more uncertain than for SO_2 and NO_X emissions. Given these uncertainties in regional emissions and interstate transport of these components, EPA has determined that it would be premature to quantify interstate impacts of these emissions through zero-out modeling, as was done for SO_2 and NO_X emissions.

In addition, the costs of control measures, their effectiveness at reducing emissions, as well as their ultimate effectiveness at reducing $PM_{2.5}$ concentrations at downwind receptors are all uncertain. The EPA does not believe it could reasonably evaluate whether such State emissions contributed significantly to transport, or what level of control would address the significant contribution. Commenters have not provided us specific data and information to allow such assessments.

The EPA also disagrees with commenters who argue that EPA should, for the purposes of this rule, permit the States to substitute controls of sources of any of these other three components for the required limits on SO_2 and NO_X. Given the greater uncertainties in estimating the contribution of alternative source emissions, States would have difficulty developing, and EPA would have difficulty in approving, SIPs that, by controlling these components, purport to reduce an upwind State's impact on downwind $PM_{2.5}$ nonattainment by an equivalent amount to that required in today's final rule.

As explained in the proposal, a decision not to regulate these components of $PM_{2.5}$ in the present rulemaking does not preclude state or local $PM_{2.5}$ implementation plans from reducing emissions of carbonaceous material, ammonia, or crustal material, in order to achieve attainment with $PM_{2.5}$ standards, in cases where there is evidence that such controls will be effective on a local basis. Although uncertainties exist in addressing long-range transport of these pollutants, state and local air quality management agencies will need to evaluate reasonable control measures for sources of these pollutants in developing SIPs due in 2008. We expect continuous improvements will be made in our understanding of source emissions and $PM_{2.5}$ components not addressed under CAIR. To assist future air quality management decisions, EPA is actively supporting research into better understanding the emissions, atmospheric processes, long range transport, and opportunities for control of these $PM_{2.5}$ components.

(d) Justification for Including NO_X in Determining Significant Contributions and for Regulating NO_X Emissions for $PM_{2.5}$ Transport

Some commenters questioned the EPA's basis for requiring emissions reductions of NO_X, in addition to SO_2, for the purposes of controlling interstate transport of $PM_{2.5}$. These comments, and EPA's response, are discussed below. Other comments addressing EPA's basis for requiring NO_X for ozone are addressed in a subsequent section.

Like SO_2, NO_X emissions are understood to affect $PM_{2.5}$ on regional scales, due in part to the time needed to convert NO_X emissions to nitrate. Like SO_2 but unlike precursors of other components of $PM_{2.5}$, emissions of NO_X are well quantified for EGUs and with reasonable accuracy for other urban and regional sources, and the transport of NO_X and $PM_{2.5}$ derived from NO_X can also be quantified with a fair degree of certainty. In addition, SO_2 and NO_X interact as part of the same chemical system in the atmosphere. Controlling SO_2 emissions without concurrently controlling NO_X emissions can lead to nitrate replacement whereby SO_2 emissions reductions will be less effective than expected. Finally, SO_2 and NO_X share common sources in fossil fuel combustion. As such, controlling emissions of both precursors in a coordinated way presents opportunities to reduce the overall cost of the control program.[25]

Commenters questioned EPA's methodology of evaluating whether an upwind State contributes significantly to $PM_{2.5}$ nonattainment by considering (through the "zero-out" air quality modeling technique) SO_2 and NO_X emissions simultaneously. These commenters argued that zeroing out SO_2 and NO_X emissions simultaneously precludes determining the contribution of each component to downwind nonattainment. Because sulfates generally comprise a greater fraction of $PM_{2.5}$ than nitrates in the Eastern U.S., these commenters argued that the basis for requiring NO_X controls is weaker than for SO_2, and has not been determined directly by EPA.

[24] EPA OAQPS CMAQ Evaluation for 2001 Docket # OAR–2003–0053–1716.

[25] NARSTO, Particulate Matter Science for Policy Makers—A NARSTO Assessment, February 2003.

The EPA's multi-pollutant approach of modeling SO_2 and NO_X contributions at the same time is consistent both with sound science and with the requirements of CAA section 110(a)(2)(D), as EPA interpreted and applied them in the NO_X SIP Call. This provision requires each State to submit a SIP to prohibit "any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will * * * contribute significantly to nonattainment" downwind. As discussed in section II above, in the NO_X SIP Call, a rulemaking in which EPA regulated NO_X emissions as precursors for ozone, EPA found that ozone resulted from the combined contributions of many emitters over a multistate region, a phenomenon that EPA termed "collective contribution" (63 FR 57356–86). As a result, EPA evaluated each State's contribution to nonattainment downwind by considering the impact of the entirety of that State's NO_X emissions on downwind nonattainment. Once EPA determined the State's entire NO_X emissions inventory to have at least a minimum downwind impact, then EPA required the State to eliminate the portion of those emissions that could be reduced through highly cost-effective controls. The EPA considered this approach to be consistent with the section 110(a)(2)(D) requirements.

In a companion rulemaking, the section 126 Rule, EPA found that certain, individual NO_X emitters must be subject to Federal regulation due to their impact on downwind nonattainment (65 FR 2674). The EPA based this finding on the same notion of "collective contribution," that is, NO_X emissions from those individual sources were part of the upwind State's total NO_X inventory, the total NO_X inventory had a sufficiently high impact on downwind nonattainment, and therefore the individual NO_X emitters should be subject to control without any separate determination as to their individual impacts on downwind nonattainment.

The DC Circuit accepted EPA's collective contribution approach upholding most of the NO_X SIP Call regulation, in *Michigan* v. *EPA*, 213 F.3d 663 (DC Cir. 2000), *cert. denied* 532 U.S. 904 (2001). Similarly, the DC Circuit upheld most aspects of EPA's Section 126 Rule, including the collective contribution basis for finding that emissions from the individual sources should be subject to regulation. *Appalachian Power Co.* v. *EPA*, 249 F.3d 1032 (DC Cir. 2001) (per curium).

As discussed elsewhere, $PM_{2.5}$ is similar to ozone in that it is the result of emissions from many sources over a multi-state region. Accordingly, EPA considers that the phenomenon of "collective contribution" is associated with $PM_{2.5}$ as well.

In the CAIR NPR, EPA selected SO_2 and NO_X as the appropriate precursors to be controlled for $PM_{2.5}$ transport, for several reasons presented above. As in the NO_X SIP Call, today's rulemaking, under CAA section 110(a)(2)(D), requires EPA to evaluate whether a particular upwind State must submit a SIP that prohibits "any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will * * * contribute significantly to nonattainment" downwind. In making this determination, EPA considers the effects of all of the appropriate precursors—here, both SO_2 and NO_X—from all of the State's sources on downwind $PM_{2.5}$ nonattainment. If that collective contribution to downwind $PM_{2.5}$ nonattainment is sufficiently high, then EPA requires the upwind State to eliminate those precursors to the extent of the availability of highly cost-effective controls.

The EPA's approach to evaluating a State's impact on downwind nonattainment by considering the entirety of the State's SO_2 and NO_X emissions is also consistent with the chemical interactions in the atmosphere of SO_2 and NO_X in forming $PM_{2.5}$. The contributions of SO_2 and NO_X emissions are generally not additive, but rather are interrelated due to the nitrate replacement phenomenon, as well as other complex chemical reactions that can include organic compounds as well. As commenters point out, the nature of these reactions can vary with location and time. The non-linear nature of some of these reactions can produce differing results depending on the relative amount of reductions and copollutants. Reductions in sulfates can increase nitrates and, in some conditions, modest reductions in nitrates can increase sulfates although through different mechanisms. Large regional reductions in both pollutants, however, are more likely to result in a significant reductions in fine particles.[26]

Based on its current understanding of regional air pollution and modeling results, EPA believes that adopting a broad new program of regional controls to continue the downward trajectory in both SO_X and NO_X begun in base programs such as the national mobile source rules and Title IV, as well as the NO_X SIP call, will ultimately result in significant benefits not only in reducing $PM_{2.5}$ nonattainment, but improving public health, reducing regional haze, and addressing multimedia environmental concerns including acid deposition and nutrient loadings in sensitive coastal estuaries in the East.[27]

Some commenters argued that the benefits of combining NO_X with SO_2 reductions, if any, would be small, and further argued that the effect of any nitrate reductions in the environment would be further diminished by measurement losses that can occur in the filter in the method used to measure $PM_{2.5}$. In so doing, they questioned the scientific basis for nitrate replacement, suggesting that this response to changes in SO_2 emissions may not happen in all places and at all times. The commenters referenced a study in the Southeastern U.S. by Blanchard and Hidy,[28] which they claim calls into question whether nitrate replacement actually occurs. In fact, the study finds evidence that nitrate replacement occurs: "the sulfate decreases were an input to the model calculations, but their effect on fine PM mass was modified by concomitant decreases in ammonium and increases in nitrate." A second study by the same authors, using essentially the same dataset and methods, and referenced both by EPA in the NPR and by the commenters, gives very strong support for the existence of nitrate replacement, as well as for coordinating SO_2 and NO_X reductions, as indicated by the following conclusions: "reductions in sulfate through SO_2 reduction at constant NO_X levels would not result in proportional reduction in $PM_{2.5}$ mass because particulate nitrate concentrations would increase. However, if both NO_X and SO_2 emissions are reduced, then it may be possible to achieve sulfate reductions without concomitant nitrate increases * * *"[29]

Nitrate replacement is well documented in the scientific literature as a possible response of $PM_{2.5}$ to changes in SO_2 emissions.[30] While these commenters are correct that nitrate replacement is not expected to occur at all places and at all times, even where average conditions are not favorable for

[26] NARSTO, Particulate Matter Science for Policy Makers—A NARSTO Assessment, February 2003.

[27] "Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005)."

[28] Blanchard, C.L., and G.M. Hidy (2004) Effects of projected utility SO_2 and NO_X emission reductions on particulate nitrate and $PM_{2.5}$ mass concentrations in the Southeastern United States, Report to Southern Company. See CAIR docket.

[29] Blanchard C.L., and G.M. Hidy (2003). Effects of changes in sulfate, ammonia, and nitric acid on particulate nitrate concentrations in the Southeastern United States, J. Air & Waste Manage. Assoc., 53: 283–290.

[30] NARSTO, Particulate Matter Science for Policy Makers—A NARSTO Assessment, February 2003.

nitrate replacement, hourly variability in those conditions can create conditions favorable for nitrate replacement at particular times. Nitrate replacement theory predicts no conditions under which SO_2 reductions would decrease nitrate, and suggests that nitrate may increase under fairly common conditions.[31] Consequently, the net effect of SO_2 reductions can be only to increase nitrate or not to have any effect. The variability of conditions occurring over a year means that SO_2 reductions would be expected to increase nitrate on balance.

Even if the studies referenced by these commenters showed that nitrate replacement does not occur in some circumstances, other studies suggest that the conditions for nitrate replacement are common in the Eastern U.S.[32] Suggesting that nitrate replacement does not occur under some conditions does not imply that NO_X should not be controlled, when it is known that nitrate replacement occurs under other common conditions.

The EPA recognizes that the relative reductions in $PM_{2.5}$ from implementation of the CAIR will be greater for SO_2 than for NO_X. Nevertheless, overall costs for reducing NO_X in the CAIR region are much lower than SO_2 because a large portion of the region has already installed NO_X controls for ozone in the summer months. Our revised modeling approaches took into account the differences commenters note between actual nitrate concentrations in the atmosphere and what is measured as $PM_{2.5}$. Nevertheless emissions of both pollutants clearly contribute to interstate transport of ambient fine particles, and EPA concludes that the best approach in this situation is to provide highly cost effective reductions for both pollutants. Moreover, in warmer conditions when apparent nitrate changes from NO_X reductions as measured on $PM_{2.5}$ monitors are small, the actual reductions in particulate and gaseous nitrates in the ambient environment are larger; accordingly, NO_X reductions combined with SO_2 reductions can be expected to reduce health risk, visibility impairment, and other environmental damages.

c. What Is EPA's Final Determination?

After considering the public comments, EPA concludes that it should adopt the approach it proposed for addressing interstate transport of pollutants that affect $PM_{2.5}$, for the reasons presented here and in the proposal. That is, in today's action, EPA is requiring states to take steps to control emissions of SO_2 and NO_X on the basis of their contributions to nonattainment of $PM_{2.5}$ standards in downwind states. The EPA concludes that we do not now have a sufficient basis for including emissions of other components (carbonaceous material, ammonia, and crustal material) that contribute to $PM_{2.5}$ in determining significant contributions and in requiring emission reductions of these components.

2. What Is the Role for Local Emissions Reduction Strategies?

a. Summary of Analyses and Conclusions in the Proposal

In section IV.F of the proposed rule, we discussed two analyses that were completed to address the impact of local control measures relative to regional reductions of SO_2 and NO_X (69 FR 4596–99). In the first analysis, we applied a list of readily identifiable control measures (NPR, Table IV–5) in the Philadelphia, Birmingham, and Chicago urban primary metropolitan statistical areas (PMSA) counties. In the second analysis, we applied a similar list of control measures to 290 counties representing the metropolitan areas we projected to contain any nonattainment county in 2010 in the baseline scenario. The three-city analysis estimated that these local measures would result in ambient $PM_{2.5}$ reductions of about 0.5 $\mu g/m^3$ to about 0.9 $\mu g/m^3$, which is less than needed to bring any of the cities into attainment in 2010. The 290-county study, which included enough counties to produce regional as well as local reductions, found that while some of the 2010 nonattainment areas would be projected to attain, many would not. Moreover, much of the $PM_{2.5}$ reduction in the 290-county study resulted from assuming reduction in sulfates due to SO_2 reductions on utility boilers in the urban counties. Accordingly, we concluded that for a sizable number of $PM_{2.5}$ nonattainment areas it will be difficult if not impossible to reach attainment unless transport is reduced to a much greater degree than by the simultaneous adoption of controls within only the nonattainment areas.

b. Summary and Response to Public Comments

A number of commenters supported EPA's conclusion that regional reductions are necessary given the difficulty in achieving local emission reductions, and given that they are generally more cost-effective. Generally, EPA agrees with these commenters.

Other commenters were critical of the local measures analysis, and recommended that EPA should consider a more appropriate mix of regional and local controls before requiring substantial expenditures for controls on power plants or other regional sources potentially affected by this rule. These commenters believed that the proposed rule did not represent the optimal emissions reduction strategy. Other commenters believed that the local measures analysis underestimated the achievable local emissions reductions. Some commenters believed that EPA should include local control measures in the baseline scenario for the analysis. Finally, some commenters questioned the feasibility of doing a local measures analysis at all, given the uncertainties in the analysis, the uncertainties regarding nonattainment boundaries, and the work to be done by State and local areas to identify and evaluate strategies.

The EPA continues to conclude that it would be difficult if not impossible for many nonattainment areas to reach attainment through local measures alone, and EPA finds no information in the comments to alter this conclusion. While recognizing the uncertainties in conducting such an analysis (as noted in the preamble to the proposed rule), we continue to believe that the two local measures scenarios represent a highly ambitious set of measures and emissions reductions that may in fact be difficult to achieve in practice. This analysis was not intended to precisely identify local measures that may be available in a particular area. The EPA believes that a strategy based on adopting highly cost effective controls on transported pollutants as a first step would produce a more reasonable, equitable, and optimal strategy than one beginning with local controls. The local measures analyses we conducted were not, however, intended to develop a specific or "optimal" regional and local attainment strategy for any given area. Rather, the analysis was intended to evaluate whether, in light of available local measures, it is likely to be necessary to reduce significant regional transport from upwind states. We continue to believe that the two local measures analyses that were conducted for the proposal rule strongly support the need for regional reductions of SO_2 and NO_X.

[31] Ibid.

[32] For example, West, J.J., A.S. Ansari, and S.N. Pandis (1999) Marginal $PM_{2.5}$, nonlinear aerosol mass response to sulfate reductions in the Eastern U.S., J. Air & Waste Manage. Assoc., 49: 1415–1424.

B. What Is the Basis for EPA's Decision To Require Reductions in Upwind Emissions of NO_X To Address Ozone-Related Transport?

1. How Did EPA Determine Which Pollutants Were Necessary To Control To Address Interstate Transport for Ozone?

In the notice of proposed rulemaking, EPA provided the following characterization of the origin and distribution of 8-hour ozone air quality problems:

The ozone present at ground level as a principal component of photochemical smog is formed in sunlit conditions through atmospheric reactions of two main classes of precursor compound: VOCs and NO_X (mainly NO and NO_2). The term "VOC" includes many classes of compounds that possess a wide range of chemical properties and atmospheric lifetimes, which helps determine their relative importance in forming ozone. Sources of VOCs include man-made sources such as motor vehicles, chemical plants, refineries, and many consumer products, but also natural emissions from vegetation. Nitrogen oxides are emitted by motor vehicles, power plants, and other combustion sources, with lesser amounts from natural processes including lightning and soils. Key aspects of current and projected inventories for NO_X and VOC are summarized in section IV of the proposal notice and EPA websites (*e.g., http://www.w.gov/ttn/chief.*) The relative importance of NO_X and VOC in ozone formation and control varies with local- and time-specific factors, including the relative amounts of VOC and NO_X present. In rural areas with high concentrations of VOC from biogenic sources, ozone formation and control is governed by NO_X. In some urban core situations, NO_X concentrations can be high enough relative to VOC to suppress ozone formation locally, but still contribute to increased ozone downwind from the city. In such situations, VOC reductions are most effective at reducing ozone within the urban environment and immediately downwind.

The formation of ozone increases with temperature and sunlight, which is one reason ozone levels are higher during the summer. Increased temperature increases emissions of volatile man-made and biogenic organics and can indirectly increase NO_X as well (*e.g.,* increased electricity generation for air conditioning). Summertime conditions also bring increased episodes of large-scale stagnation, which promote the build-up of direct emissions and pollutants formed through atmospheric reactions over large regions. The most recent authoritative assessments of ozone control approaches [33, 34] have concluded that, for reducing regional scale ozone transport, a NO_X control strategy would be most effective, whereas VOC reductions are most effective in more dense urbanized areas.

Studies conducted in the 1970s established that ozone occurs on a regional scale (*i.e.,* 1000s of kilometers) over much of the Eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.[35, 36] While progress has been made in reducing ozone in many urban areas, the Eastern U.S. continues to experience elevated regional scale ozone episodes in the extended summer ozone season.

Regional 8-hour ozone levels are highest in the Northeast and Mid-Atlantic areas with peak 2002 (3-year average of the 4th highest value for all sites in the region) ranging from 0.097 to 0.099 parts per million (ppm).[37] The Midwest and Southeast States have slightly lower peak values (but still above the 8-hour standard in many urban areas) with 2002 regional averages ranging from 0.083 to 0.090 ppm. Regional-scale ozone levels in other regions of the country are generally lower, with 2002 regional averages ranging from 0.059 to 0.082 ppm. Nevertheless, some of the highest urban 8-hour ozone levels in the nation occur in southern and central California and the Houston area.

In the notice of proposed rulemaking, EPA noted that we continue to rely on the assessment of ozone transport made in great depth by the OTAG in the mid-1990s. As indicated in the NO_X SIP call proposal, the OTAG Regional and Urban Scale Modeling and Air Quality Analysis Work Groups reached the following conclusions:

A. Regional NO_X emissions reductions are effective in producing ozone benefits; the more NO_X reduced, the greater the benefit.

B. Controls for VOC are effective in reducing ozone locally and are most advantageous to urban nonattainment areas. (62 FR 60320, November 7, 1997).

[33] Ozone Transport Assessment Group, OTAG Final Report, 1997.

[34] NARSTO, An Assessment of Tropospheric Ozone Pollution—A North American Perspective, July 2000.

[35] National Research Council, Rethinking the Ozone Problem in Urban and Regional Air Pollution, 1991.

[36] NARSTO, An Assessment of Tropospheric Ozone Pollution—A North American Perspective, July 2000.

[37] U.S. EPA, Latest Findings on National Air Quality, August 2003.

The EPA proposed to reaffirm this conclusion in this rulemaking, and proposed to address only NO_X emissions for the purpose of reducing interstate ozone transport.

Some commenters suggested that in this rulemaking EPA should require regional reductions in VOC emissions as well as NO_X emissions in this rulemaking.[38] The EPA continues to believe based on the OTAG and NARSTO reports cited earlier, and the modeling completed as part of the analysis for this rule, that NO_X emissions are chiefly responsible for regional ozone transport, and that NO_X reductions will be most effective in reducing regional ozone transport. This understanding was considered an adequate basis for controlling NO_X emissions for ozone transport in the NO_X SIP call, and was upheld by the courts. As a result, EPA is requiring NO_X reductions and not VOC reductions in this rulemaking.

However, EPA agrees, that VOCs from some upwind States do indeed have an impact in nearby downwind States, particularly over short transport distances. The EPA expects that States will need to examine the extent to which VOC emissions affect ozone pollution levels across State lines, and identify areas where multi-state VOC strategies might assist in meeting the 8-hour standard, in planning for attainment. This does not alter the basis for the CAIR ozone requirements in this rule; EPA's modeling supports the conclusion that NO_X emissions from upwind states will significantly contribute to downwind nonattainment and interfere with maintenance of the 8-hour ozone standard.

2. How Did EPA Determine That Reductions in Interstate Transport, as Well as Reductions in Local Emissions, Are Warranted To Help Ozone Nonattainment Areas To Meet the 8-Hour Ozone Standard?

a. What Did EPA Say in Its Proposal Notice?

In the NPR, EPA noted that the Agency promulgated the NO_X SIP call in 1998 to address interstate ozone transport problems in the Eastern U.S. The EPA noted that it made sense to re-evaluate whether the NO_X SIP call was adequate at the same time that the Agency was assessing the need for emissions reductions to address interstate $PM_{2.5}$ problems because of overlap in the pollutants and relevant

[38] Other commenters confirmed that the control of NO_X emissions is critical for interstate ozone transport, and supported EPA's decision not to include VOC emissions in this rule.

sources, and the timetables for States to submit local attainment plans. The EPA presented a new analysis of the extent of residual 8-hour ozone attainment projected to remain in 2010, and the extent and severity of interstate pollution transport contributing to downwind nonattainment in that year.

The proposal notice said that based on a multi-part assessment, EPA had concluded that:

- "Without adoption of additional emissions controls, a substantial number of urban areas in the central and eastern regions of the U.S. will continue to have levels of 8-hour ozone that do not meet the national air quality standards.
- * * * EPA has concluded that small contributions of pollution transport to downwind nonattainment areas should be considered significant from an air quality standpoint, because these contributions could prevent or delay downwind areas from achieving the standards.
- * * * EPA has concluded that interstate transport is a major contributor to the projected (8-hour ozone) nonattainment problem in the eastern U.S. in 2010. * * * (T)he nonattainment areas analyzed receive a transport contribution of more than 20 percent of the ambient ozone concentrations, and 21 of 47 had a transport contribution of more than 50 percent.
- Typically, two or more States contribute transported pollution to a single downwind area, so that the "collective contribution" is much larger than the contribution of any single State.

Also, EPA concluded that highly cost-effective reductions in NO_X emissions were available within the eastern region where it determined interstate transport was occurring, and that requiring those highly cost effective reductions would reduce ozone in downwind nonattainment areas.

In addition, the proposal examined the effect of hypothetical across-the-board emissions reductions in nonattainment areas. The notice stated that EPA had conducted a preliminary scoping analysis in which hypothetical total NO_X and VOC emissions reductions of 25 percent were applied in all projected nonattainment areas east of the continental divide in 2010, yet approximately 8 areas were projected to have ozone levels exceeding the 8-hour standard. Based on experience with state plans for meeting the one-hour ozone standard, EPA said this scenario was an indication that attaining the 8-hour standard will entail substantial cost in a number of nonattainment areas, and that further regional reductions are warranted.

b. What Did Commenters Say?

The Need for Reductions in Interstate Ozone Transport: Some commenters argued that EPA should not conduct another rulemaking to control interstate contributions to ozone because local contributions in nonattainment regions appear, according to the commenters, to have larger impacts than regional NO_X emissions. The commenters cited EPA's sensitivity modeling of hypothetical 25 percent reductions as supporting this view.

The EPA disagrees that comparing the sensitivity modeling and the CAIR control modeling is a valid way to compare the effectiveness of local and regional controls. The two scenarios do not reduce emissions by equal tonnage amounts, equal percentages of the inventory, or equal cost. These scenarios therefore do not support an assessment of the relative effectiveness of local and regional controls. While EPA in general agrees that emissions reductions in a nonattainment area will have a greater effect on ozone levels in that area than similar reductions a long distance away, EPA does not agree that the modeling supports the conclusion that all additional controls to promote attainment with the 8-hour standard should be local. The level of reduction assumed was a hypothetical level, not a level determined to be reasonable cost nor a mandated level of reduction. The commenters provided no evidence that reasonable local controls alone would result in attainment throughout the East. However, EPA did receive comments that such a level would result in costly controls and might not be feasible in some areas that have previously imposed substantial controls.

The EPA believes it is clear that further reductions in emissions contributing to interstate ozone transport, beyond those required by the NO_X SIP Call, are warranted to promote attainment of the 8-hour ozone standard in the eastern U.S. As explained elsewhere in this final rule, EPA analyzed interstate transport remaining after the NO_X SIP Call, and determined—considering both the impact of interstate transport on downwind nonattainment, and the potential for highly cost effective reductions in upwind States—that 25 States significantly contribute to 8-hour ozone nonattainment downwind. The importance of transport is illustrated, as mentioned above, by EPA's findings for the final rule that (1) all the 2010 nonattainment counties analyzed were projected to receive a transport contribution of 24 percent or more of the ambient ozone concentrations, and (2) that 16 of 38 counties are projected to have a transport contribution of more than 50 percent.

In addition, EPA received multiple comments from State associations and individual States strongly agreeing that further reductions in interstate ozone transport are warranted to promote attainment with the 8-hour standard, to protect public health, and to address equity concerns of downwind states affected by transport. For example, comments from the Maryland Department of the Environment stated, "Our 15 year partnership with researchers from the University of Maryland has produced data that shows on many summer days the ozone levels floating into Maryland area are already at 80 to 90 percent of the 1-hour ozone standard and actually exceed the new 8-hour ozone standard before any Maryland emissions are added. * * * Serious help is needed from EPA and neighboring states to solve Maryland's air pollution problems. * * * Local reductions alone will not clean up Maryland's air." The comments of the Ozone Transport Commission stated that even after levels of control envisioned by EPA in 2010 (under the Clear Skies Act), interstate transport from other states would continue to affect the Ozone Transport Region created by the CAA (Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia). "Our modeling demonstrates that even in the extreme example of zero anthropogenic emissions within the OTR (Ozone Transport Region), 145 of 146 monitors show a significant (>25%) increment of the 8-hour standard taken up by transport from outside the OTR." Comments from the North Carolina Department of Environment and Natural Resources stated, "The reductions proposed in [EPA's rule] in the other states are needed to ensure that North Carolina can attain and maintain the health-based air quality standards for * * * 8-hour ozone."

Magnitude of Ozone Reductions Achieved: Commenters stated that NO_X reductions should not be pursued because the 8-hour ozone reductions in projected nonattainment counties resulting from the required NO_X reductions are too small—1–2 ppb in only certain areas. According to commenters, these benefits are smaller than the threshold for determining significant contribution.

The EPA disagrees with the notion that if air quality improvements would be limited, then nothing further should be done to address interstate transport. Based on the difference between the base case and CAIR control case modeling results, EPA has concluded that interstate air quality impacts are significant from an air quality standpoint, and that highly cost effective reductions are available to reduce ozone transport. State comments have corroborated EPA's conclusion that a number of areas will face high local control costs, or even be unable to attain the 8-hour ozone standard, without further reductions in interstate transport. Therefore, EPA believes it is important for upwind states to modify their SIPs so that they contain adequate provisions to prohibit significant contributions to downwind nonattainment or interference with maintenance as the statute requires. The EPA has established an amount of required emissions reductions based on controls that are highly cost effective. The resulting improvements in downwind ozone levels are needed for attainment, public health and equity reasons.

The 2 ppb significance threshold that commenters cite is part of the test that EPA used to identify which States should be evaluated for inclusion in a rule requiring them to reduce emissions to reduce interstate transport. (See section VI.) This 2 ppb threshold is based on the impact on a downwind area of eliminating *all* emissions in an upwind State. The ozone reductions from CAIR will improve public health and will decrease the extent and cost of local controls needed for attainment in some areas. In addition, base case modeling for this rule shows that of the 40 counties projected in nonattainment in 2010, 16 counties are within 2 ppb of the standard, 6 counties are within 3 ppb, and 3 counties are within 4 ppb. In 2015, projected base case ozone concentrations in over 70 percent of nonattaining counties (*i.e.*, 16 of 22 counties) are within 5 ppb of the standard.

Reducing NO_X emissions has multiple health and environmental benefits. Controlling NO_X reduces interstate transport of fine particle levels as well as ozone levels, as discussed elsewhere in this notice. Although EPA is not relying on other benefits for purposes for setting requirements in this rule, reducing NO_X emissions also helps to reduce unhealthy ozone and PM levels within a State, as well as reduce acid deposition to soils and surface waters, eutrophication of surface and coastal waters, visibility degradation, and impacts on terrestrial and wetland systems such as changes in species composition and diversity.

EPA's Authority To Require Controls Beyond the NO_X SIP Call: Commenters emphasized that in the NO $_X$ *SIP Call, EPA determined the States whose emissions contribute significantly to nonattainment, EPA mandated NO_X* emissions reductions that would eliminate those significant contributions, and EPA indicated that it would reconsider the matter in 2007. This commenter argued that for the States included in the NO_X SIP Call, EPA may not, as a legal matter, conduct further rulemaking at this time because the affected States are no longer contributing significantly to nonattainment downwind. In any event, the commenters said, EPA should abide by its statement that it would revisit the matter in 2007, and EPA should not do so earlier.

Sound policy considerations support re-examining interstate ozone transport at this time. At the time of the NO_X SIP Call, EPA anticipated reassessing in 2007 the need for additional reductions in emissions that contribute to interstate transport, but EPA has accelerated that date in light of various circumstances, including the fact that we are undertaking similar action with the $PM_{2.5}$ NAAQS. In addition, in light of overlap in the pollutants, States, and sources likely to be affected, it is prudent to coordinate action under the 8-hour ozone standard. The EPA notes that evaluating $PM_{2.5}$ transport and ozone transport together at this time will enable States to consider the resulting rules in devising their $PM_{2.5}$ and 8-hour ozone attainment plans, and will enable States and sources to plan emissions reductions knowing their transport-related reduction requirements for both standards.

CAA section 110(a)(2)(D) requires that State SIPs contain "adequate provisions" prohibiting emissions that significantly contribute to nonattainment areas in, or interfere with maintenance by, other States. Over time, emissions of ozone precursors, the (projected) non-attainment status of receptors, the modeling tools that EPA and the states use to conduct their analyses, the data available to the states or EPA and other analytic tools or conditions may change. The EPA has conducted an updated analysis of upwind contribution to downwind nonattainment of 8-hour ozone nonattainment areas after the NO_X SIP Call, including updated emissions projections, updated air quality modeling, and updated analysis of control costs. This has revealed a need for reductions beyond those required by the NO_X SIP Call in order for upwind states to be in compliance with section 110(a)(2)(D). The EPA thus disagrees with commenters' assertions that the provisions of section 110(a)(2)(D) prevent EPA from conducting further evaluation of upwind contributions to downwind nonattainment at this time. The EPA also notes that the NO_X SIP Call, a 1998 rulemaking, promulgated a set of requirements intended to eliminate significant contribution to downwind ozone nonattainment at the time of implementation, which EPA identified on the basis of modeling for the year 2007 (although implementation was required to occur several years earlier). In today's action, EPA is reviewing the transport component of 8-hour ozone nonattainment for the period beginning in 2010, consistent with the criteria in the NO_X SIP Call as applied to present circumstances, concluding that even with implementation of the NO_X SIP Call controls, upwind States will contribute significantly to downwind ozone nonattainment and interfere with maintenance at a point after 2007. No provision of the CAA prohibits this action.

Commenters added that the purpose of the CAIR rulemaking seemed to be to account for the fact that control costs have changed since the date of the NO_X SIP Call. The commenters said that control costs will frequently fluctuate, but that such fluctuations should not merit revised rulemaking.

In response, we would note that EPA conducted an updated analysis for air quality impacts, not only costs, in determining that further reductions in interstate ozone transport are warranted. That air quality analysis showed a substantial, continuing interstate transport problem for areas after implementation of the NO_X SIP Call. The EPA does have the legal authority to reconsider the scope of the area that significantly contributes and the level of control determined to be "highly cost-effective" based on new information. Updated information shows that lower NO_X burners and SCR achieve better performance than previously estimated and as a result are more cost effective than previously anticipated. This rule follows the NO_X SIP Call by six years; EPA does not believe that this represents a too-frequent re-evaluation, particularly given the stay of the 8-hour basis for the NO_X SIP Call (*See, e.g.*, CAA section 109(d)(1) requiring EPA to reevaluate the NAAQS themselves every five years.) So both updated air quality and cost information supports further

NO_X controls to reduce interstate transport.

Some commenters argued that EPA should delay imposing control obligations on upwind States for the 8-hour ozone NAAQS until after EPA has implemented local control requirements, and after all of the NO_X SIP Call control requirements are implemented and evaluated. Others said EPA should not impose requirements on non-SIP-Call States until after all 8-hour controls—NO_X SIP Call and local—are implemented.

We agree that the NO_X SIP Call should be taken into account in evaluating the need for further interstate transport controls. We have taken the NO_X SIP Call into account by including the effect of the NO_X SIP Call in the base case used for the CAIR analysis, and by conducting analyses to confirm that CAIR will achieve greater ozone-season reductions than the SIP Call. The EPA disagrees that the Agency should wait for implementation of local controls before determining transport controls. There is no legal requirement that EPA wait to determine transport controls until after local controls are implemented. The EPA's basis for this legal interpretation is explained in section II.A. above. In addition, the Agency believes it is important to address interstate transport expeditiously for public health.

C. Comments on Excluding Future Case Measures From the Emissions Baselines Used To Estimate Downwind Ambient Contribution

The EPA received comments that the 2010 analytical baseline for evaluating whether upwind emissions meet the air quality portion of the "contribute significantly" standard should reflect local control measures that will be required in the downwind nonattainment areas, or broader statewide measures in downwind states, to attain the $PM_{2.5}$ or 8-hour ozone NAAQS by the relevant attainment dates, many of which are (or are anticipated to be) 2010 or earlier. This single target year was chosen both to address analytical tool constraints and to reasonably reflect future conditions in or near the initial attainment years for both ozone and PM nonattainment areas. The EPA did include in the baseline most of the specifically required measures that can be identified at this time, but did not include any further measures that would be needed for satisfying "rate of progress" requirements or for attainment of the $PM_{2.5}$ and 8-hour ozone standards. If EPA had included further local controls, the commenters contend, fewer upwind States would have exceeded our significant contribution thresholds.

We reject any notion that in determining the need for transport controls in upwind states, EPA should assume that the affected downwind areas must "go all the way first"—that is, assume that downwind areas put on local in-state controls sufficient to reach attainment, or assume that downwind states with nonattainment areas implement statewide control measures. The EPA does not believe these are appropriate assumptions. The former assumption would eviscerate the meaning of CAA section 110(a)(2)(D). The latter assumption would make the downwind state solely responsible for reductions in any case where a downwind state could attain through in-state controls alone, even if the upwind state contribution was significantly contributing to nonattainment problems in the downwind state. We do not believe that this approach would be consistent with the intent of section 110(a)(2)(D), which in part is to hold upwind states responsible for an appropriate share of downwind nonattainment and maintenance problems, and to prevent scenarios in which downwind states must impose costly extra controls to compensate for significant pollution contributions from uncontrolled or poorly controlled sources in upwind states. In addition, this approach could raise costs of meeting air quality standards because highly cost effective controls in upwind States would be foregone.

Rather, in the particular circumstances presented here, we think the adoption of regional controls at this time under section 110(a)(2)(D) is consistent with sound policy and section 110. Based on our analysis, the states covered by CAIR make a significant contribution to downwind nonattainment and the required reductions are highly cost effective. The reductions will reduce regional pollution problems affecting multiple downwind areas, will make it possible for States to determine the extent of local control needed knowing the reductions in interstate pollution that are required, will address interstate equity issues that can hamper control efforts in downwind States, and reflect considerations discussed in detail in section VII.

Although some commenters advocated specifically including statutorily mandated future nonattainment area controls in the analytical baseline, it would be difficult as a practical matter to predict the extent of local controls that will be required (beyond controls previously required) in each area in advance of final implementation rules interpreting the Act's requirements for $PM_{2.5}$ and 8-hour ozone, and before the state implementation plan process. Subpart 2 provisions that apply to certain ozone nonattainment areas are quite specific regarding some mandatory measures; we believe the CAIR baseline for the most part captures these measures. (See Response to Comments document in the docket.) As noted above, the choice of a single analytical year of 2010 was made to reflect baseline conditions at a date at or near the attainment dates for different pollutants and classes of areas. Because the attainment date for many ozone areas is 2009 or earlier, it should be noted that the analyses in 2010 may slightly overestimate the benefits of a number of national rules for mobile sources that grow with time. As noted elsewhere, these differences are unlikely to be significant.

D. What Criteria Should Be Used To Determine Which States Are Subject to This Rule Because They Contribute to $PM_{2.5}$ Nonattainment?

1. What Is the Appropriate Metric for Assessing Downwind $PM_{2.5}$ Contribution?

a. Notice of Proposed Rulemaking

In the NPR, we proposed as the metric for identifying a State as significantly contributing (depending upon further consideration of costs) to downwind nonattainment, the predicted change, due to the upwind State's emissions, in $PM_{2.5}$ concentration in the downwind nonattainment area that receives the largest ambient impact. The EPA proposed this metric in the form of a range of alternatives for a "bright line," that is, ambient impacts at or greater than the chosen threshold level indicated that the upwind State's emissions do contribute significantly (depending on cost considerations), and that ambient impacts below the threshold mean that the upwind State's emissions do not contribute significantly to nonattainment. As detailed in section VI below, EPA conducted the analysis through air quality modeling that removed the upwind State's anthropogenic SO_2 and NO_X emissions, and determined the difference in downwind ambient $PM_{2.5}$ levels before and after removal. The modeling results indicate a wide range of maximum downwind nonattainment impacts from the 37 States that we evaluated. The largest maximum contribution is 1.67 micrograms per cubic meter ($\mu g/m^3$), from Ohio to both Allegheny and Beaver counties in Pennsylvania.

b. Comments and EPA's Responses

The EPA proposed to use the maximum contribution on any downwind nonattainment area for assessing downwind $PM_{2.5}$ contributions. Many commenters expressed agreement with our proposed metric, however, many others disagreed. One group of these commenters indicated that EPA should distinguish the relative contribution from States using two parameters: (1) How many downwind nonattainment receptors they contribute to, and (2) how much they contribute to each such receptor. The commenters indicated that this approach would avoid inequities created by the disproportionate impact of some upwind contributors on their downwind neighbors. The EPA interprets these comments to suggest a metric that collectively includes both of these parameters, such as the sum of all downwind impacts on all affected receptors. This metric would result in higher values for States contributing to multiple receptors and at relatively high levels, and lower values for States contributing to fewer receptors and at relatively low levels.

The EPA's proposed metric does address how much each State contributes to a downwind neighbor; however, EPA does not believe that multiple downwind receptors need to be impacted in order for a particular state to be required to make emissions reductions under CAA section 110(a)(2)(D). Under this provision, an upwind State must include in the SIP adequate provisions that prohibit that State's emissions that "contribute significantly to nonattainment in * * * *any other State* * * *." (Emphasis added.) Our interpretation of this provision is that the emphasized terms make clear that the upwind State's emissions must be controlled as long as they contribute significantly to a single nonattainment area.

One commenter agreed with EPA's use of maximum annual average downwind contribution, but suggested that EPA consider additional metrics such as: (a) Contributions to adverse health and welfare effects from short-term $PM_{2.5}$ concentrations; (b) contributions to worst 20 percent haze levels in Class 1 areas; and (c) contributions to adverse effects of sulfur and nitrogen deposition to acid sensitive surface waters and forest soils. The EPA appreciates that these metrics all have merit in their focus on the health and environmental consequences of emissions, however, in determining a metric for significant contributions, we must focus on implementation of CAA section 110(a)(2)(D) provisions regarding significant contribution to nonattainment of the $PM_{2.5}$ NAAQS.

Another commenter suggested EPA use the maximum annual average impact, as we proposed, but add the maximum daily $PM_{2.5}$ contribution. The commenter notes that this additional metric would indicate whether specific meteorological events drive the concentration change or whether there is a consistent pattern of transport from one area to another. It is not clear to EPA how the single data point of the maximum daily contribution indicates a consistent pattern of transport from one area to another since it is a measure from only a single day. Further, EPA does not agree that multiple days of impact is a relevant criterion for evaluating whether a State contributes significantly to nonattainment, since in theory, a single high-contribution event could be the cause or a substantial element of nonattainment of the annual average $PM_{2.5}$ standard. Because we currently do not observe nonattainment of the daily average $PM_{2.5}$ standard in Eastern areas, nonattainment of the annual average $PM_{2.5}$ standard is the relevant evaluative measure.

Some commenters suggested separately evaluating the NO_X- and SO_2-related impacts (*i.e.*, particulate nitrate and particulate sulfate) on nonattainment. As discussed in section II of this notice, EPA's approach to evaluating a State's impact on downwind nonattainment by considering the entirety of the State's SO_2 and NO_X emissions is consistent with the chemical interactions in the atmosphere of SO_2 and NO_X in forming $PM_{2.5}$. The contributions of SO_2 and NO_X emissions are generally not additive, but rather are interrelated due to complex chemical reactions.

c. Today's Action

The EPA continues to believe that for each upwind State analyzed, the change in the annual $PM_{2.5}$ concentration level in the downwind nonattainment area that receives the largest impact is a reasonable metric for determining whether a State passes the "air quality" portion of the "contribute significantly" test, and therefore that State should be considered further for emissions reductions (depending upon the cost of achieving those reductions). This single concentration-based metric is adequate to capture the impact of SO_2 and NO_X emissions on downwind annual $PM_{2.5}$ concentrations.

2. What Is the Level of the $PM_{2.5}$ Contribution Threshold?

a. Notice of Proposed Rulemaking

In the NPR, EPA proposed to establish a State-level annual average $PM_{2.5}$ contribution threshold from anthropogenic SO_2 and NO_X emissions that was a small percentage of the annual air quality standard of 15.0 $\mu g/m^3$. The EPA based this proposal on the general concept that an upwind State's contribution of a relatively low level of ambient impact should be regarded as significant (depending on the further assessment of the control costs). We based our reasoning on several factors. The EPA's modeling indicates that at least some nonattainment areas will find it difficult or impossible to attain the standards without reductions in upwind emissions. In addition, our analysis of "base case" $PM_{2.5}$ transport shows that, in general, $PM_{2.5}$ nonattainment problems result from the combined impact of relatively small contributions from many upwind States, along with contributions from in-State sources and, in some cases, substantially larger contributions from a subset of particular upwind States. In the NO_X SIP Call rulemaking, we termed this pattern of contribution—which is also present for ozone nonattainment—"collective contribution."

In the case of $PM_{2.5}$, we have found collective contribution to be a pronounced feature of the $PM_{2.5}$ transport problem, in part because the annual nature of the $PM_{2.5}$ NAAQS means that throughout the entire year and across a range of wind patterns—rather than during just one season of the year or on only the few worst days during the year which may share a prevailing wind direction—emissions from many upwind States affect the downwind nonattainment area.

As a result, to address the transport affecting a given nonattainment area, many upwind States must reduce their emissions, even though their individual contributions may be relatively small. Moreover, as noted above, EPA's air quality modeling indicates that at least some nonattainment areas will find it difficult or impossible to attain the standards without reductions in upwind emissions. In combination, these factors suggest a relatively low value for the $PM_{2.5}$ transport contribution threshold is appropriate. For reasons specified in the NPR (69 FR 4584), EPA initially proposed a value of 0.15 $\mu g/m^3$ (1% of the annual standard) for the significance criterion, but also presented analyses based on an alternative of 0.10 $\mu g/m^3$ and called for comment on this alternative as well as on "the use of

higher or lower thresholds for this purpose" (69 FR 4584).

The EPA adopted a conceptually similar approach to that outlined above for determining that the significance level for ozone transport in the NO_X SIP Call rulemaking should be a small number relative to the NAAQS. The DC Circuit Court, in generally upholding the NO_X SIP Call, viewed this approach as reasonable. *Michigan* v. *EPA*, 213 F.3d 663, 674–80 (DC Cir. 2000), *cert. denied*, 532 U.S. 904 (2001). After describing EPA's overall approach of establishing a significance level and requiring States with impacts above the threshold to implement highly cost-effective reductions, the Court explained: "EPA's design was to have a lot of States make what it considered modest NO_X reductions * * *." *Id.* at 675. Indeed, the Court intimated that EPA could have established an even lower threshold for States to pass the air quality component:

> The EPA has determined that ozone has some adverse health effects—however slight—at every level [citing National Ambient Air Quality Standards for Ozone, 62 FR 38856 (1997)]. Without consideration of cost it is hard to see why any ozone-creating emissions should not be regarded as fatally "significant" under section 110(a)(2)(D)(i)(I)."
>
> 213 F.3d at 678 (emphasis in original).

We believe the same approach applies in the case of $PM_{2.5}$ transport.

b. Comments and EPA's Responses

Many commenters indicated that EPA did not adequately justify the proposed annual average $PM_{2.5}$ contribution threshold level of 0.15 $\mu g/m^3$. Some commenters favor the alternative 0.10 $\mu g/m^3$ proposed by EPA, citing their agreement with EPA's rationale for 0.10 $\mu g/m^3$ while criticizing as arbitrary EPA's rationale for 0.15 $\mu g/m^3$.

Some commenters argued that the public health impact portion of EPA's rationale for establishing a relatively low-level threshold was not relevant. The commenters said that EPA previously determined, in establishing the $PM_{2.5}$ NAAQS, that ambient levels at or above 15.0 $\mu g/m^3$ were of concern for protecting public health, not the much lower levels that EPA proposed as the thresholds. In the NPR, we stated that we considered that there are significant public health impacts associated with ambient $PM_{2.5}$, even at relatively low levels. In generally upholding the NO_X SIP Call, the DC Circuit noted a similar reason for establishing a relatively low threshold for ozone impacts. *Michigan* v. *EPA*, 213 F.3d 663, 678 (DC Cir. 2000), cert. denied, 532 U.S. 904 (2001). The EPA notes that by using a metric that focuses on the contribution of upwind areas to downwind areas that are above 15.0 $\mu g/m^3$, relatively low contributions to levels above the annual $PM_{2.5}$ standard are highly relevant to public health protection.

Many commenters offered alternative thresholds higher than 0.15 $\mu g/m^3$, citing previous EPA rules or policies as justification for the alternative level. Some suggested the $PM_{2.5}$ threshold should be equivalent in percentage terms to the threshold employed for assessing maximum downwind 8-hour ozone contributions. The threshold for maximum downwind 8-hour ozone concentration impact used in the NO_X SIP Call, and proposed for use in the CAIR, is 2 parts per billion (ppb), or about 2.5 percent of the standard level of 80 ppb. Applying the 2.5 percent criterion to the 15.0 $\mu g/m^3$ annual $PM_{2.5}$ standard would yield a significance threshold of 0.35 $\mu g/m^3$.

The EPA disagrees with the comment that the thresholds for annual $PM_{2.5}$ and 8-hour ozone should be an equivalent percentage of their respective NAAQS. Both the forms and averaging times of the two standards are substantially different, with 8-hour ozone based on the average of the 4th highest daily 8-hour maximum values from each of 3 years, and $PM_{2.5}$ based on the average of annual means from 3 successive years. These fundamental differences in time scales, and thus in the patterns of transport that are relevant to contributing to nonattainment, do not suggest a transparent reason for presuming that the contribution thresholds should be equivalent. As discussed above, when more States make smaller individual contributions because of the annual nature of the $PM_{2.5}$ standard, it makes sense to have a threshold for $PM_{2.5}$ that is a smaller percentage of its NAAQS.

Other commenters suggested that in setting the maximum downwind $PM_{2.5}$ threshold, EPA should take into consideration the measurement precision of existing $PM_{2.5}$ monitors. The commenters assert that such measurement carries "noise" in the range of 0.5—0.6 $\mu g/m^3$. Because many daily average monitor readings are averaged to calculate the annual average, the precision of the annual average concentration is better than the figures cited by the commenters. Indeed, the annual standard is expressed as 15.0 $\mu g/m^3$, rounded to the nearest $^1/_{10}$ μg, because such small differences are meaningful on an annual basis. While disagreeing with the specific amounts suggested by commenters, EPA recognizes that the $PM_{2.5}$ threshold specified in the proposal contains two digits beyond the decimal place, while the NAAQS specifies only one. The EPA agrees that specification of a threshold value of 0.15 $\mu g/m^3$ does suggest an overly precise test that might need to take into account modeled difference in $PM_{2.5}$ values as low as 0.001 $\mu g/m^3$.

Other commenters indicated that modeling "noise"—that is, imprecision—is a relevant consideration for establishing a threshold whose evaluation depends on air quality modeling analysis. These commenters indicated that a threshold of 5 percent of the NAAQS (*i.e.*, 0.75 $\mu g/m^3$) is more reasonable considering modeling sensitivity. The commenters were not clear about what they mean by modeling "noise" and did not explain how it relates to the use of a threshold metric in the context of the CAIR.

In responding to the comment, we have considered some possible contributors to what the commenter describes as "noise." There is the possibility that the air quality model has a systematic bias in predicting concentrations resulting from a given set of emissions sources. The EPA uses the model outputs in a relative, rather than an absolute, sense so that any modeling bias is constrained by real world results. As described further in section VI, EPA conducts a relative comparison of the results of a base case and a control case to estimate the percentage change in ambient $PM_{2.5}$ from the current year base case, holding meteorology, other source emissions, and other factors contributing to uncertainty constant. With this technique, any absolute modeling bias is cancelled out because the same model limitations and uncertainties are present in each set of runs.

Another possible source of noise is in the relative comparison of two model runs conducted on different computers. Since the computers used by EPA to run air quality models do not have any significant variability in their numerical processes, two model runs with identical inputs result in outputs that are identical to many significant digits. On the other hand, EPA believes it is not appropriate or necessary to carry such results to a level of precision that is beyond that required by the $PM_{2.5}$ NAAQS itself[39].

Many commenters noted that EPA's proposed threshold of 0.15 $\mu g/m^3$, or one percent of the annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$, is lower than the single-source contribution thresholds

[39] In attainment modeling for the annual $PM_{2.5}$ NAAQS, results are carried to the second place beyond the decimal, in contrast to the three places beyond decimal noted above for the proposed threshold.

employed for PM_{10} in certain other regulatory contexts. Commenters cited several different thresholds, including thresholds governing the applicability of the preconstruction review permit program and the emissions reduction requirement for certain major new or modified stationary sources located in attainment or unclassified areas;[40] and thresholds in the PSD rules that may relieve proposed sources from performing comprehensive ambient air quality analyses.[41]

Since the thresholds referred to by the commenters serve different purposes than the CAIR threshold for significant contribution, it does not follow that they should be made equivalent. The implication of the thresholds cited by the commenters is not that single-source contributions below these levels indicate the absence of a contribution. Rather, these thresholds address whether further more comprehensive, multi-source review or analysis of appropriate control technology and emissions offsets are required of the source. A source with estimated impacts below these levels is recognized as still affecting the airshed and is subject to meeting applicable control requirements, including best available control technology, designed to moderate the source's impact on air quality. The purpose of the CAIR threshold for $PM_{2.5}$ is to determine whether the annual average contribution from a collection of sources in a State is small enough not to warrant any additional control for the purpose of mitigating interstate transport, even if that control were highly cost effective.

One commenter suggested that EPA also establish and evaluate a threshold for a potential new tighter 24-hour $PM_{2.5}$ standard (*e.g.*, 1 percent of 30 $\mu g/m^3$). The EPA must base its criteria on evaluation of the current $PM_{2.5}$ standards and not standards that may be considered in the future.

c. Today's Action

The EPA continues to believe that the threshold for evaluating the air quality component of determining whether an individual State's emissions "contribute significantly" to downwind nonattainment of the annual $PM_{2.5}$ standard, under CAA section 110(a)(2)(D) should be very small compared to the NAAQS. We are, however, persuaded by commenters arguments on monitoring and modeling that the precision of the threshold should not exceed that of the NAAQS. Rounding the proposal value of 0.15, the nearest single digit corresponding to about 1% of the $PM_{2.5}$ annual NAAQS is 0.2 $\mu g/m^3$. The final rule is based on this threshold. The EPA has decided to apply this threshold such that any model result that is below this value (0.19 or less)indicates a lack of significant contribution, while values of 0.20 or higher exceed the threshold.[42]

Using this metric for determining whether a State "contributes significantly" (before considering cost) to $PM_{2.5}$ nonattainment, our updated modeling shows that Kansas, Massachusetts, New Jersey, Delaware, and Arkansas (all included in the original proposal) no longer exceed the 0.2 $\mu g/m^3$ annual average $PM_{2.5}$ contribution threshold. Of these states, only Arkansas would exceed the threshold of 0.15 $\mu g/m^3$ that was included in the proposal.

E. What Criteria Should Be Used To Determine Which States Are Subject to This Rule Because They Contribute to Ozone Nonattainment?

1. Notice of Proposed Rulemaking

In assessing the contribution of upwind States to downwind 8-hour ozone nonattainment, EPA proposed to follow the approach used in the NO_X SIP Call and to employ the same contribution metrics, but with an updated model and updated inputs that reflect current requirements (including the NO_X SIP Call itself).[43]

The air quality modeling approach we proposed to quantify the impact of upwind emissions includes two different methodologies: Zero-out and source apportionment. As described in section VI, EPA applied each methodology to estimate the impact of all of the upwind State's NO_X emissions on each downwind nonattainment areas.

The EPA's first step in evaluating the results of these methodologies was to remove from consideration those States whose upwind contributions were very low. Specifically, EPA considered an upwind State not to contribute significantly to a downwind nonattainment area if the State's maximum contribution to the area was either (1) less than 2 ppb, as indicated by either of the two modeling techniques; or (2) less than one percent of total nonattainment in the downwind area.[44]

If the upwind State's impact exceeded these thresholds, then EPA conducted a further evaluation to determine if the impact was high enough to meet the air quality portion of the "contribute significantly" standard. In doing so, EPA organized the outputs of the two modeling techniques into a set of "metrics." The metrics reflect three key contribution factors:

- The magnitude of the contribution (actual amount of ozone contributed by emissions in the upwind State to nonattainment in the downwind area);
- The frequency of the contribution (how often contributions above certain thresholds occur); and
- The relative amount of the contribution (the total ozone contributed by the upwind State compared to the total amount of nonattainment ozone in the downwind area).

The specific metrics on which EPA proposed to rely are the same as those used in the NO_X SIP Call. Table III–1 lists them for each of the two modeling techniques, and identifies their relationship to the three key contribution factors.

[40] *See* 40 CFR 51.165(b)(2). New or modified major sources in attainment or unclassifiable areas must undergo preconstruction permit review, adopt best available control technology, and obtain emissions offsets if they are determined to "cause or contribute" to a violation of the NAAQS. "Cause or contribute" is defined as an impact that exceeds 5 $\mu g/m^3$ (3.3 percent) of the 150 $\mu g/m^3$ 24-hour average PM_{10} NAAQS , or 1 $\mu g/m^3$ (2 percent) of the annual average PM_{10} NAAQS.

[41] *See* 40 CFR 51.166(i)(5)(i). Proposed new sources or existing-source modifications that would contribute less than 10 $\mu g/m^3$ (or 5.3%) of the 150 $\mu g/m^3$ PM_{10} 24-hour average NAAQS, estimated using on a screening model, may avoid the requirement of collecting and submitting ambient air quality data.

[42] This truncation convention for $PM_{2.5}$ is similar to that used in evaluating modeling results in applying the ozone significance screening criterion of 2 ppb in the NO_X SIP call and the CAIR proposal (Technical Support Document for the Interstate Air Quality Rule Air Quality Modeling Analyses", January 2004. Docket # OAR–2003–0053–0162), as well as today's final action.

[43] Today's action, including the updated modeling, fulfills EPA's commitment in the NO_X SIP Call (which EPA finalized in 1998) to reevaluate interstate ozone contributions by 2007. *See* 63 FR 57399; October 27, 1998.

[44] See the CAIR Air Quality Modeling TSD for description of the methodology used to calculate these metrics.

TABLE III–1.—OZONE CONTRIBUTION FACTORS AND METRICS

Factor	Modeling technique	
	Zero-out	Source apportionment
Magnitude of Contribution	Maximum contribution	Maximum contribution; and Highest daily average contribution (ppb and percent).
Frequency of Contribution	Number and percent of exceedances with contributions in various concentration ranges.	Number and percent of exceedances with contributions in various concentration ranges.
Relative Amount of Contribution	Total contribution relative to the total exceedance ozone in the downwind area; and. Population-weighted total contribution relative to the total population-weighted exceedance ozone in the downwind area.	Total average contribution to exceedance hours in the downwind area.

In the NPR, EPA proposed threshold values for the metrics. An upwind State whose contribution to a downwind area exceeded the threshold values for at least one metric in each of at least two of the three sets of metrics was considered to contribute significantly (before considering cost) to that downwind area. To reiterate, the three sets of metrics reflect the factors of magnitude of contribution, frequency of contribution, and relative percentage on nonattainment.

In fact, EPA noted in the NPR that for each upwind State, the modeling disclosed at least one linkage with a downwind nonattainment area in which all factors (magnitude, frequency, and relative amount) were found to indicate large and frequent contributions. In addition, EPA noted in the NPR that each upwind State contributed to nonattainment problems in at least two downwind States (except for Louisiana and Arkansas which contributed to nonattainment in only 1 downwind State).

In addition, EPA noted in the NPR that for most of the individual linkages, the factors yield a consistent result across all three sets of metrics (*i.e.*, either (i) large and frequent contributions and high relative contributions or (ii) small and infrequent contributions and low relative contributions). In some linkages, however, not all of the factors are consistent. The EPA believes that each of the factors provides an independent, legitimate measure of contribution.

In the NPR, EPA applied the evaluation methodology described above to each upwind-downwind linkage to determine which States contribute significantly (before considering cost) to nonattainment in the 40 downwind counties in nonattainment for ozone in the East. The analysis of the metrics for each linkage was presented in the AQMTSD for the NPR. The modeling analysis supporting the final rule is an update to the NPR modeling, and is described in more detail in section VI below.

2. Comments and EPA Responses

Some commenters submitted comments specifically on the 8-hour ozone metrics. One commenter asserted that in calculating the "Relative Amount of Contribution" metric, EPA treats the modeled reductions from zeroing out a State's emissions as impacting only the portion of the downwind receptor's ambient ozone level that exceeds the 8-hour average 84 ppb level. The commenter asserted that this approach falsely treats the upwind state's emissions as contributing to the amount of ozone that exceeds the NAAQS, and thus inflates the ambient impact of those emissions. The commenter concluded that it would be more appropriate to treat the upwind emissions as impacting all of the downwind ozone level (not just the portion greater than 84 ppb). We interpret this comment to mean that in expressing an upwind State's contribution as a percentage, the denominator of the percentage should be the downwind area's total ozone contribution, rather than the downwind area's ozone excess above the NAAQS, but that the same threshold should be used to evaluate contribution. This would tend to result in fewer upwind States being found to be significant with respect to this metric.

We believe that it is important to examine the ozone contribution relative to the amount of ozone above the NAAQS as well as the amount relative to total nonattainment ozone. Both approaches have merit. The intent of the relative contribution metric, as calculated for the zero-out modeling, is to view the contribution of the upwind State relative to the amount that the downwind area is in nonattainment; that is, the amount of ozone above the NAAQS. However, our relative amount metric for the source apportionment modeling does treat the amount of contribution relative to the total amount of ozone when ozone concentrations are predicted to be above the NAAQS. To be found a significant contributor, an upwind State must be above the threshold for both the zero-out-based metric and the source-apportionment-based metric. Thus, our approach to considering the significance of interstate ozone transport captures both approaches for examining the relative amount of contribution and does not favor one approach over the other, as discussed above.

3. Today's Action

The EPA is finalizing the methodology proposed in the NPR, and discussed above, for evaluating the air quality portion of the "contribute significantly" standard for ozone.

F. Issues Related to Timing of the CAIR Controls

1. Overview

A number of commenters questioned the need for CAIR requirements considering that cap dates of 2010 and 2015 are later than the attainment dates that, in the absence of extensions, would apply to certain downwind $PM_{2.5}$ areas and ozone nonattainment areas. Other commenters, noting that states will be required to adopt controls in local attainment plans, questioned whether CAIR controls would still be needed to avoid significant contribution to downwind nonattainment, or whether the controls would still be needed to the extent required by the rule.

Of course, CAIR will achieve substantial reductions in time to help many nonattainment areas attain the standards by the applicable attainment dates. The design of the SO_2 program, including the declining caps in 2010 and 2015 and the banking provisions, will steadily reduce SO_2 emissions over time, achieving reductions in advance of the cap dates; and the 2009 and 2015 NO_X reductions will be timely for many downwind nonattainment areas.

Although many of today's nonattainment areas will attain before all the reductions required by CAIR will be achieved, it is clear that CAIR's reductions will still be needed through 2015 and beyond. The EPA's air quality modeling has demonstrated that upwind States have a sufficiently large impact on downwind areas to require reductions in 2010 and 2015 under CAA section 110(a)(2)(D). Under this provision, SIPs must prohibit emissions from sources in amounts that "will contribute significantly to * * * nonattainment" or "will interfere with maintenance".[45] The EPA has evaluated the attainment status of the downwind receptors in 2010 and 2015, and has determined that each upwind State's 2010 and 2015 emissions reductions are necessary to the extent required by the rule because a downwind receptor linked to that upwind State will either (i) remain in nonattainment and continue to experience significant contribution to nonattainment from the upwind State's emissions; or (ii) attain the relevant NAAQS but later revert to nonattainment due, for example, to continued growth of the emissions inventory.

The argument that the CAIR reductions are justified, in part, by the need to prevent interference with maintenance, is a limited one. The EPA does not believe that the "interfere with maintenance" language in section 110(a)(2)(D) requires an upwind state to eliminate all emissions that may have some impact on an area in a downwind state that is (or once was) in nonattainment and that, therefore, will need (or now needs) to maintain its attainment status. Instead, we believe that CAIR emission reductions are needed beyond 2010 and 2015, in part, to prevent upwind states from significantly interfering with maintenance in other states because our analysis shows it is likely that, in the absence of the CAIR, a current or projected attainment area will revert to nonattainment due to continued emissions growth or other relevant factors. We are not taking the position that CAIR controls are automatically justified to prevent interference with maintenance in every area initially modeled to be in nonattainment.

We also note that considering the emission controls needed for maintenance, along with the controls needed to reach attainment in the first place, is consistent with the goal of promoting a reasonable balance between upwind state controls and local (including all in-state) controls to attain and maintain the NAAQS. As discussed in section IV of this notice, in the ideal world, the states and EPA would have enough information (and powerful enough analytical tools) to allow us to identify a mix of control strategies that would bring every area of the country into attainment at the lowest overall cost to society. Under such an approach, we would evaluate the impact of every emissions source on air quality in all nonattainment areas, the cost of different options for controlling those sources, and the cost-effectiveness of those controls in terms of cost per increment of air quality improvement. Such an approach would obviously make it easier for a state to develop an appropriate set of control requirements for sources located in that state based on (1) the need to bring its own nonattainment areas into attainment and (2) its responsibility under section 110(a)(2)(D) to prevent significant contribution to nonattainment in downwind States and interference with maintenance in those States.

Such an approach would also make it much easier for the Agency to decide on efficiency grounds whether to take action under section 126 (or under section 110(a)(2)(D) if a State failed to meet its obligations under that section) for purposes of either attainment or maintenance of a NAAQS in another State. In the simplest example, we might need to consider a case in which a downwind State with a nonattainment area is seeking reductions from an upwind State based on the claim that emissions from the upwind state are contributing significantly to the nonattainment problem in the downwind State. In such a case, the first question is whether the upwind state should be required to take any action at all, and in the ideal world, it would be simple to answer this question. If emission reductions from sources in the upwind State are more cost-effective than emission reductions in the downwind State—in terms of cost per increment of improvement in air quality in the downwind nonattainment area—then the upwind State would need to take some action to control emissions from sources in that State.[46] On the other hand, if controls on sources in the upwind State are not more cost-effective in terms of cost per increment of improvement in air quality, then the Agency would not take action under sections 126 or 110(a)(2)(D); rather, the downwind State would need to meets its attainment and maintenance needs by controlling sources within its own jurisdiction. Of course, factors other than efficiency, such as equity or practicality, also might affect the decision.

Unfortunately, we do not have adequate information or analytical tools (ideally a detailed linear programming model that fully integrates both control costs and ambient impacts of sources in each State on each of the downwind receptors) to allow us to undertake the analysis described above at this time. However, the Agency believes that CAIR is consistent with this basic approach and will result in upwind States and downwind States sharing appropriate responsibility for attainment and maintenance of the relevant NAAQS, considering efficiency, equity and practical considerations. Under CAIR, the required reductions in upwind States (including those projected to occur after 2015) are highly cost effective, measured in cost-per-ton of emissions reduction, as documented in section IV. This suggests that, regardless of whether the CAIR reductions assist downwind areas in achieving attainment or in subsequently maintaining the relevant NAAQS, the upwind controls will be reasonable in cost relative to a further increment of local controls that, in most cases, will have a substantially higher cost per ton—particularly in areas that need greater local reductions and require reductions from a variety of source types.[47] Thus, we believe that CAIR is consistent with the goal of attaining and maintaining air quality standards in an efficient, as well as equitable, manner.

Another reason for considering both attainment and maintenance needs at this time is EPA's expectation that most nonattainment areas will be able to

[45] As in the NO_X SIP Call rulemaking, EPA interprets the "interfere with maintenance" statutory requirement "much the same as the term 'contribute significantly'", that is, "through the same weight-of-evidence approach." 63 FR at 57379. Furthermore, we believe the "interfere with maintenance" prong may come into play only in circumstances where EPA or the State can reasonably determine or project, based on available data, that an area in a downwind state will achieve attainment, but due to emissions growth or other relevant factors is likely to fall back into nonattainment. *Id.*

[46] This does not mean that the upwind state would be responsible for making all the reductions necessary to bring the downwind State's nonattainment area into attainment; how much would be required of each State is a separate question. Again in the ideal world, we would be able to find the right mix of controls in both states so that attainment would be achieved at the lowest total cost.

[47] Tables describing cost effectiveness of various control measures and programs are provided in section IV. These show that the cost per ton of non-power-sector control options that states might consider for attainment purposes typically is higher than for CAIR controls.

attain the $PM_{2.5}$ and 8-hour ozone standards within the time periods provided under the statute. Considering both types of downwind needs shows that there is a strong basis for CAIR's requirements despite the potential for most receptor areas to attain before all the emission reductions required by CAIR are achieved.

2. By Design, the CAIR Cap and Trade Program Will Achieve Significant Emissions Reductions Prior to the Cap Deadlines

The EPA notes that Phase I of CAIR is the initial step on the slope of emissions reduction (*i.e.*, the "glide path") leading to the final control levels. Because of the incentive to make early emission reductions that the cap and trade program provides, reductions will begin early and will continue to increase through Phases I and II. Therefore, all the required Phase II emission reductions will not take place on January 1, 2015, the effective date of the second phase cap. Rather, these reductions will accrue throughout the implementation period, as the sources install controls and start to test and operate them. The resulting glide path of reductions with CAIR Phase II will provide important reductions to areas coming into attainment over the 2010 to 2014 period.[48]

3. Additional Justification for the SO_2 and NO_X Annual Controls

Our modeling indicates that it is very plausible that a significant number of downwind $PM_{2.5}$ receptors are likely to remain in nonattainment in 2010 and beyond. As noted below (Preamble Table VI–10), the Agency has evaluated a wide range of emission control options and found that the average ambient reduction in $PM_{2.5}$ concentrations achievable through aggressive but feasible local controls is 1.26 $\mu g/m^3$. In the 2010 base case (which does not consider potential local controls or 2010 CAIR controls, but does consider all other emission controls required to be in effect as of that date), nearly half the receptor counties would be in nonattainment by more than this amount. This indicates that nonattainment is of sufficient severity to make it likely that, in the absence of CAIR, many of these areas would need an attainment date extension of at least one year.

Our base case modeling further shows that every upwind state is linked to at least one receptor area projected to have nonattainment of this severity. Tables VI–10 and VI–11. Thus, there is a reasonable likelihood that CAIR controls will be needed from all of the upwind states to prevent significant contribution to these downwind receptors' nonattainment.

Nor is the amount of reduction in excess of what is needed for attainment. We project that even with CAIR controls, almost all of the upwind states in 2010 remain linked with at least one downwind receptor that would not attain by the same substantial margin exceeding the average of aggressive local controls. Tables VI–10 and VI–8. This not only indicates that the 2010 CAIR controls are not excessive, but that local controls will still be necessary for attainment.

In addition, there is potential for residual nonattainment in 2015 in view of the severity of $PM_{2.5}$ levels in some areas, uncertainties about the levels of reductions in $PM_{2.5}$ and precursors that will prove reasonable over the next decade, the potential for up to two 1-year extensions for areas that meet certain air quality levels in the year preceding their attainment date, and historical examples in which areas did not meet their statutory attainment dates for other NAAQS.

With respect to the argument that phase II emission reductions that will be achieved after 2015 are not needed because all receptors will have attained before 2015, we think it likely that some $PM_{2.5}$ nonattainment areas may qualify for 2014 attainment dates and eventually, one-year attainment date extensions, and that there may be residual nonattainment in 2015. We continue to project that nearly half the downwind receptors in the 2015 base case will be in nonattainment by amounts exceeding the average ambient reduction (again, 1.26 $\mu g/m^3$) attributable to local controls we believe would be aggressive but feasible for 2010. Table VI–11. The history of progress in development of emission reduction strategies and technologies indicates that greater local reductions could be achieved by 2015 than in 2010; nonetheless, this potential nonattainment is of sufficient severity to make it plausible that at least some of these areas will need an extension. In such cases, this would eliminate the issue of timing raised by commenters, since CAIR controls would no longer be following attainment dates.

Our modeling further shows that, in the 2015 base case (which does not include CAIR controls), all the upwind states in the CAIR region are linked to areas projected to exceed the standard by at least 2 $\mu g/m^3$. Tables VI–11 and VI–8. Given the reasonable potential for continued nonattainment, it is reasonable to require 2015 CAIR controls from each upwind state to prevent significant contribution to nonattainment.

Moreover, even with 2015 CAIR controls (but not attainment SIP controls), almost all of the upwind states remain linked with at least one downwind receptor that would not attain by at least this same substantial margin (at least 1.26 $\mu g/m^3$). *Id.* This shows that the 2015 CAIR controls are not more than are necessary to attain the NAAQS (and also shows the necessity for local controls in order to attain). Thus, we conclude that the further $PM_{2.5}$ reductions achieved by the second phase cap will likely be needed to assure all relevant areas reach attainment by applicable deadlines.

Even if some of these areas make more progress than we predict, many downwind receptor areas would be likely in 2010 and 2015 to continue to have air quality only marginally better than the standard, and be at risk of returning to nonattainment. Air quality is unlikely to be appreciably cleaner than the standard because many areas will need steep reductions merely to attain, given that we project nonattainment by wide margins (as explained above).

Moreover, we project that without CAIR, $PM_{2.5}$ levels would worsen in 19 downwind receptor counties between 2010 and 2015, reflecting changes in local and upwind emissions. Air Quality Modeling Technical Support Document, November, 2004. This suggests a reasonable likelihood that, without CAIR, these areas would return to nonattainment. See 63 FR at 57379–80 (finding in NO_X SIP Call that upwind emissions interfere with maintenance of 8-hour ozone standard under section 110(a)(2)(D)(i) where increases in emissions of ozone precursors are projected due to growth in emissions generating activity, resulting in receptors no longer attaining the standard). These downwind receptors link to all but two of the upwind states, and the remaining two upwind states are linked to receptors where projected $PM_{2.5}$ levels between 2010 and 2015 improve only slightly, leaving their air quality only marginally in attainment. Response to Comments, section III.C. In light of documented year-to-year variations in $PM_{2.5}$ levels, these receptors would have a reasonable probability of returning to nonattainment in the absence of CAIR.

Emissions trends after 2015 give rise to further maintenance concerns. Between 2015 and 2020, emissions of

[48] A similar glide path will occur prior to the effective date of the Phase I SO_2 cap because this cap will complement and extend the cap that currently exists under the Acid Rain program.

$PM_{2.5}$ and certain precursors are projected to rise. We do not have air quality modeling for 2020. However, for $PM_{2.5}$ and every precursor, the 2015–2020 emission trend is less favorable than the 2010–2015 emission trend. Given the $PM_{2.5}$ increases our air quality modeling found for 19 counties between 2010 and 2015, the emission trends suggest greater maintenance concerns in the 2015–2020 period than during the 2010–2015 period. See Response to Comments section III.C.

Accordingly, we believe that given these projected trends, and the likelihood of only borderline attainment, CAIR controls from every upwind state in the CAIR region are needed to prevent interference with maintenance of the $PM_{2.5}$ standard. The projected upwards pressure on $PM_{2.5}$ concentrations in most receptor areas indicates that the amount of upwind reductions is not more than necessary to prevent interference with maintenance of the standards, again given the likelihood of initial attainment by narrow margins.

4. Additional Justification for Ozone NO_X Requirements

We believe that most 8-hour ozone areas will be able to attain by their attainment deadlines through existing measures, 2009 CAIR NO_X reductions, and additional local measures. However, we also believe that a limited number of downwind receptor areas will remain in nonattainment with the ozone standard after 2010. This is due to the severity of projected ozone levels in certain areas, uncertainties about the levels of emissions reductions in that will prove reasonable over the next decade, and historical difficulties with attaining the 1-hour ozone standard.

For ozone, the historic difficulties that many areas, particularly large urban areas, have experienced in attaining the ozone NAAQS raises the possibility that some areas may not attain by their attainment dates, and may request a voluntary bump up to a higher classification pursuant to section 181(b)(2) to gain an extension, or may fail to attain by the attainment date and be bumped up under section 181(b)(2). These authorities were used in the course of implementing the 1-hour ozone NAAQS.

Our base case modeling (without CAIR, and without state controls implementing the 8-hour standard) projects geographically widespread nonattainment with the 8-hour ozone NAAQS in 2015. Tables VI–12 and VI–13. Five counties that link to 14 upwind states have projected ozone levels that exceed the 8-hour standard by 6 ppb or more, and 20 upwind states are linked to counties projected to exceed the 8-hour standard by more than 4 ppb. These two sets of linkages show that under a scenario in which several of the receptors with the highest ozone levels did not attain, CAIR reductions would be justified to prevent significant contributions from many of the upwind states in the CAIR ozone region.

The fact that receptors show significant nonattainment even after implementation of the phase II CAIR reductions, as shown in Table VI–13, indicates that these reductions would not be more than necessary to prevent significant contribution to nonattainment in residual areas. Even if all ozone nonattainment areas in the CAIR region could achieve reductions sufficient to meet the level of the 8-hour ozone standard in 2009[49] based on local controls, 2009 CAIR NO_X reductions, and existing programs, we believe that numerous downwind receptor areas would remain close enough to the standard to be at risk of falling back into nonattainment for the reasons discussed below. These receptor areas are linked to all states in the CAIR ozone region.

First, it is highly unlikely that the receptor areas will be able to attain by a wide margin. This is primarily because many of those areas will need substantial emissions reductions merely to attain. This is supported by modeling showing that in the 2010 base case, 30 percent of the receptors are projected to be in nonattainment by the wide margin of 6 ppb or more, indicating the steep emissions reductions necessary just to come into attainment. Table VI–12. We recognize that, unlike the trend in key PM receptor areas, our modeling projects that the ozone levels in ozone receptor areas will improve somewhat between 2010 and 2015 due chiefly to downward trends in NO_X emissions projected under existing requirements. Nonetheless, as shown in detail in the Response to Comments, the projected improvements in ozone levels in the receptor areas are less (often considerably less) than historic variability in monitored 8-hour ozone design values from one three year period to the next.[50] We believe this variability is mostly attributable to changing weather conditions (which significantly affect the rate at which ozone is formed in the atmosphere and movement of ozone after it is formed), rather than variability in the emissions inventory. Thus, absent the second phase CAIR cap, these receptors remain vulnerable to falling back into nonattainment. The receptors for which this is the case link to each of the upwind States in the ozone CAIR region.

IV. What Amounts of SO_2 and NO_X Emissions Did EPA Determine Should Be Reduced?

In today's rule, EPA requires annual SO_2 and NO_X emissions reductions and ozone-season NO_X emissions reductions to eliminate the amount of emissions that contribute significantly to nonattainment of the NAAQS for $PM_{2.5}$ and ozone. The NO_X reductions are phased in beginning in 2009, the SO_2 reductions beginning in 2010, and both caps are lowered in 2015. In this section of the preamble, EPA explains its analysis of the cost portion of the contribute-significantly test, which determines the amount of required emissions reductions. The cost portion requires analysis of whether the control program under review is highly cost effective, and other factors that are discussed below in section IV.A.

In section IV.A of today's preamble, EPA explains its methodology for determining the amounts of SO_2 and NO_X emissions that must be eliminated for compliance with the CAIR. Section IV.A is divided into IV.A.1, IV.A.2, IV.A.3, and IV.A.4. In IV.A.1, EPA explains the methodology that the Agency used to model control costs for evaluation of cost effectiveness. In IV.A.2, EPA describes the methodology that was proposed in the NPR for determining the amounts of emissions that must be eliminated, including an overview of the proposed methodology, a description of the NO_X SIP Call regulatory history in relation to the proposed methodology, and a description of EPA's proposed criteria for determining emission reduction requirements. Section IV.A.3 summarizes some comments received regarding the proposed methodology. Section IV.A.4 describes EPA's evaluation of highly cost-effective SO_2 and NO_X emissions reductions based on controlling EGUs.

Section IV.A.4 is further divided into IV.A.4.a and IV.A.4.b, which address

[49] Attainment deadlines for moderate ozone areas are to be no later than June 2010; an approvable attainment plan must demonstrate the reductions needed for attainment will be achieved by the ozone season in the preceding year.

[50] We recognize that in the absence of substantial evidence, variability alone would not be a sufficient basis for applying the "interfere with maintenance" prong of section 110(a)(2)(D). Here, however, where there is a substantial body of historical data documenting the variability in ozone concentrations, we believe it is appropriate to consider variability in determining whether emission reductions from upwind states are necessary to prevent interference with maintenance of the ozone standard in downwind states.

SO_2 and NO_X emission reduction requirements, respectively. Section IV.A.4.a describes EPA's evaluation of highly cost-effective SO_2 reduction requirements, beginning with a summary of the proposal and then describing today's final determination. In IV.A.4.b., EPA describes its evaluation of highly cost-effective NO_X reduction requirements, also beginning with a summary of the proposal and then describing today's final determination. Section IV.A.4.b first addresses annual NO_X reductions, and then addresses ozone season NO_X reductions. The final regionwide CAIR SO_2 and NO_X control levels are provided within section IV.A, while a more detailed description of today's final emission reduction requirements is presented in section IV.D.

In section IV.B of today's preamble, EPA discusses other (non-EGU) sources that the Agency considered in developing today's rule.

Section IV.C of today's preamble explains the schedule for implementing today's SO_2 and NO_X emissions reductions requirements. This section begins with an overview of the schedule (see section IV.C.1), then provides a detailed discussion of the engineering factors that affect timing for control retrofits (section IV.C.2). Within IV.C.2, EPA first describes the NPR discussion of engineering factors including the availability of boilermaker labor as a limitation (IV.C.2.a), then presents some comments received (IV.C.2.b) and EPA's responses (IV.C.2.c). In section IV.C.3, EPA discusses the financial stability of the power sector in relation to the schedule for the CAIR.

Section IV.D of today's preamble provides a detailed description of the final CAIR emission reduction requirements. Regionwide SO_2 and NO_X control levels, projected base case emissions and emissions after the CAIR, and projected emissions reductions are presented. Section IV.D begins with a description of the criteria used to determine final control requirements and provides the details of the final requirements.

A. What Methodology Did EPA Use To Determine the Amounts of SO_2 and NO_X Emissions That Must Be Eliminated?

1. The EPA's Cost Modeling Methodology

The EPA conducted analysis using the Integrated Planning Model (IPM) that indicates that its CAIR SO_2 and NO_X reduction requirements are highly cost effective. Cost effectiveness is one portion of the contribute-significantly test. The EPA uses the IPM to examine costs and, more broadly, analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous States and the District of Columbia. The IPM is a multi-regional, dynamic, deterministic linear programming model of the U.S. electric power sector. The EPA used the IPM to evaluate the cost and emissions impacts of the policies required by today's action to limit annual emissions of SO_2 and NO_X and ozone season emissions of NO_X from the electric power sector (on the assumption that all affected States choose to implement reductions by controlling EGUs using the model cap and trade rule).

The EPA conducted analyses for the final CAIR using the 2004 update of the IPM, version 2.1.9. Documentation describing the 2004 update is in the CAIR docket and on EPA's Web site. Some highlights of the 2004 update include: Updated inventory of electric generating units (EGUs) and installed pollution control equipment; updated State emission regulations; updated coal choices available to generating units; updated natural gas supply curves; updated SCR and SNCR cost assumptions; updated assumptions on performance of NO_X combustion controls; updated title IV SO_2 bank assumptions; updated heat rates and SO_2 and NO_X emission rates; and, updated repowering costs.

The National Electric Energy Data System (NEEDS) contains the generation unit records used to construct model plants that represent existing and planned/committed units in EPA modeling applications of the IPM. The NEEDS includes basic geographic, operating, air emissions, and other data on all the generation units that are represented by model plants in EPA's v.2.1.9 update of the IPM.

The IPM uses model run years to represent the full planning horizon being modeled. That is, several years in the planning horizon are mapped into a representative model run year, enabling the IPM to perform multiple-year analyses while keeping the model size manageable. Although the IPM reports results only for model run years, it takes into account the costs in all years in the planning horizon. In EPA's v.2.1.9 update of the IPM, the years 2008 through 2012 are mapped to run year 2010, and the years 2013 through 2017 are mapped to run year 2015.[51] Model outputs for 2009 and 2010 are from the 2010 run year. Model outputs for 2015 are from the 2015 run year.

The EPA used the IPM to conduct the cost-effectiveness analysis for the emissions control program required by today's action. The model was used to project the incremental electric generation production costs that result from the CAIR program. These estimates are used as the basis for EPA's estimate of average cost and marginal cost of emissions reductions on a per ton basis. The model was also used to project the marginal cost of several State programs that EPA considers as part of its base case.

In modeling the CAIR with the IPM, EPA assumes interstate emissions trading. While EPA is not requiring States to participate in an interstate trading program for EGUs, we believe it is reasonable to evaluate control costs assuming States choose to participate in such a program since that will result in less expensive reductions. The EPA's IPM analyses for the CAIR includes all fossil fuel-fired EGUs with generating capacity greater than 25 MW.

The EPA's IPM modeling accounts for the use of the existing title IV bank of SO_2 allowances. The projected EGU SO_2 emissions in 2010 and 2015 are above the cap levels, because of the use of the title IV bank. The annual SO_2 emissions reductions that are achieved in 2010 and 2015 are based on the caps that EPA determined to be highly cost effective, including the existence of the title IV bank.

The final CAIR requires annual SO_2 and NO_X reductions in 23 States and the District of Columbia, and also requires ozone season NO_X reductions in 25 States and the District of Columbia. Many of the CAIR States are affected by both the annual SO_2 and NO_X reduction requirements and the ozone season NO_X requirements.

The EPA initially conducted IPM modeling for today's final action using a control strategy that is similar but not identical to the final CAIR requirements.[52] Many of the analyses for the final CAIR are based on that initial modeling, as explained further below. The control strategy that EPA initially modeled included three additional States (Arkansas, Delaware and New Jersey) within the region required to make annual SO_2 and NO_X reductions. However, these three States are not required to make annual reductions under the final CAIR. (In the "Proposed Rules" section of today's **Federal**

[51] An exception was made to the run year mapping for an IPM sensitivity run that examined the impact of a NO_X Compliance Supplement Pool (CSP). In that run the years 2009 through 2012 were mapped to 2010 and 2008 was mapped to 2008.

[52] The EPA began our emissions and economic analyses for the CAIR before the air quality analysis, which affects the States covered by the final rule, was completed

Register, EPA is publishing a proposal to include Delaware and New Jersey in the CAIR region for annual SO_2 and NO_X reductions.) The addition of these three States made a total of 26 States and the District of Columbia covered by annual SO_2 and NO_X caps for the initial model run. The initial model run also included individual State ozone season NO_X caps for Connecticut and Massachusetts, and did not include ozone season NO_X caps for any other States.

The Agency conducted revised final IPM modeling that reflects the final CAIR control strategy. The final IPM modeling includes regionwide annual SO_2 and NO_X caps on the 23 States and the District of Columbia that are required to make annual reductions, and includes a regionwide ozone season NO_X cap on the 25 States and the District of Columbia that are required to make ozone season reductions. The EPA modeled the final CAIR NO_X strategy as an annual NO_X cap with a nested, separate ozone season NO_X cap.

In this section of today's preamble, the projected CAIR costs and emissions are generally derived from the final IPM run reflecting the final CAIR. However, some of EPA's analyses are based on the initial IPM run, described above, which reflected a similar but not identical control strategy to the final CAIR. Analyses that are presented in this section of the preamble that are based on the initial IPM run include: IPM sensitivity runs that examine the effects of using the Energy Information Administration (EIA) natural gas price and electricity growth assumptions; marginal cost effectiveness curves developed using the Technology Retrofitting Updating Model; estimates of average annual SO_2 and NO_X control costs and average non-ozone season NO_X control costs, and projected control retrofits used in the feasibility analysis. The air quality analysis in section VI of today's preamble and the benefits analysis in section X, as well as the analyses presented in the Regulatory Impact Analysis (RIA), are based on emissions projections from the initial IPM run.

The EPA believes that the differences between the initial IPM run that the Agency used for many of the analyses for the CAIR, and the final IPM run reflecting the final CAIR requirements, have very little impact on projected control costs and emissions. For the two IPM runs, projected marginal costs of CAIR annual NO_X reductions in 2009 and 2015 are identical. In addition, for the two IPM runs, projected marginal costs of CAIR annual SO_2 reductions in 2010 and 2015 are almost identical. Also, the 2009 and 2015 projected annual NO_X emissions in the region encompassing the States that are affected by the final CAIR annual NO_X requirements are virtually identical when compared between the two model runs (difference between projected NO_X emissions is less than 1 percent for 2009 and less than 2 percent for 2015). In addition, the 2010 and 2015 projected annual SO_2 emissions in the region encompassing the States that are affected by the final CAIR annual SO_2 requirements are virtually the same when compared between the two runs (difference between projected SO_2 emissions is less than 1 percent for 2010 and less than 2 percent for 2015). These comparisons confirm EPA's belief that the initial IPM run very closely represents the final CAIR program.

The IPM output files for the model runs used in CAIR analyses are available in the CAIR docket. A Technical Support Document in the CAIR docket entitled "Modeling of Control Costs, Emissions, and Control Retrofits for Cost Effectiveness and Feasibility Analyses" further explains the IPM runs used in the analyses for section IV of the preamble.

2. The EPA's Proposed Methodology To Determine Amounts of Emissions That Must be Eliminated

a. Overview of EPA Proposal for the Levels of Reductions and Resulting Caps, and Their Timing

In the NPR, the amounts of SO_2 and NO_X emissions reductions that EPA proposed could be cost effectively eliminated in the CAIR region in 2010 and 2015, and the amount of the proposed EGU emissions caps for SO_2 and NO_X that would exist if all affected States achieved those reductions by capping EGU emissions, appear in Tables IV–1 and IV–2, respectively.

TABLE IV–1.—PROJECTED SO_2 AND NO_X EMISSION REDUCTIONS IN THE CAIR REGION IN 2010 AND 2015 FOR THE PROPOSED RULE

[Million Tons][1]

Pollutant	2010	2015
SO_2	3.6	3.7
NO_X	1.5	1.8

[1] CAIR Notice of Proposed Rulemaking (69 FR 4618, January 30, 2004). The proposed annual SO_2 and NO_X caps covered a 27-State (AL, AR, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI) plus DC region. In addition, we proposed an ozone-season only cap for Connecticut.

TABLE IV–2.—PROPOSED ANNUAL ELECTRIC GENERATING UNIT SO_2 AND NO_X EMISSIONS CAPS IN THE CAIR REGION

[Million Tons][1]

Pollutant	2010–2014	2015 and later
SO_2	3.9	2.7
NO_X	1.6	1.3

[1] CAIR Notice of Proposed Rulemaking (69 FR 4618, January 30, 2004). The proposed annual SO_2 and NO_X caps covered a 27-State (AL, AR, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI) plus DC region. In addition, we proposed an ozone-season only cap for Connecticut.

In the NPR, EPA evaluated the amounts of SO_2 and NO_X emissions in upwind States that contribute significantly to downwind $PM_{2.5}$ nonattainment and the amounts of NO_X emissions in upwind States that contribute significantly to downwind ozone nonattainment. That is, EPA determined the amounts of emissions reductions that must be eliminated to help downwind States achieve attainment, by applying highly cost-effective control measures to EGUs and determining the emissions reductions that would result.

From past experience in examining multi-pollutant emissions trading programs for SO_2 and NO_X, EPA recognized that the air pollution control retrofits that result from a program to achieve highly cost-effective reductions are quite significant and can not be immediately installed. Such retrofits require a large pool of specialized labor resources, in particular, boilermakers, the availability of which will be a major limiting factor in the amount and timing of reductions.

Also, EPA recognized that the regulated industry will need to secure large amounts of capital to meet the control requirements while managing an already large debt load, and is facing other large capital requirements to improve the transmission system. Furthermore, allowing pollution control retrofits to be installed over time enables the industry to take advantage of planned outages at power plants (unplanned outages can lead to lost revenue) and to enable project management to learn from early installations how to deal with some of the engineering challenges that will exist, especially for the smaller units that often present space limitations.

Based on these and other considerations, EPA determined in the NPR that the earliest reasonable deadline for compliance with the final

highly cost-effective control levels for reducing emissions was 2015 (taking into consideration the existing bank of title IV SO_2 allowances). First, the Agency confirmed that the levels of SO_2 and NO_X emissions it believed were reasonable to set as annual emissions caps for 2015 lead to highly cost-effective controls for the CAIR region.

Once EPA determined the 2015 emissions reductions levels, the Agency determined a proposed first (interim) phase control level that would commence January 1, 2010, the earliest the Agency believed initial pollution controls could be fully operational (in today's final action, the first NO_X control phase commences in 2009 instead of in 2010, as explained in detail in section IV.C). The first phase would be the initial step on the slope of emissions reductions (the glide-path) leading to the final (second) control phase to commence in 2015. The EPA determined the first phase based on the feasibility of installing the necessary emission control retrofits, as described in section IV.C.

Although EPA's primary cost-effectiveness determination is for the 2015 emissions reductions levels, the Agency also evaluated the cost effectiveness of the first phase control levels to ensure that they were also highly cost effective. Throughout this preamble section, EPA reports both the 2015 and 2010 (and 2009 for NO_X) cost-effectiveness results, although the first phase levels were determined based on feasibility rather than cost effectiveness. The 2015 emissions reductions include the 2010 (and 2009 for NO_X) emissions reductions as a subset of the more stringent requirements that EPA is imposing in the second phase.

b. Regulatory History: NO_X SIP Call

In the NPR, EPA generally followed the statutory interpretation and approach under CAA section 110(a)(2)(D) developed in the NO_X SIP Call rulemaking. Under this interpretation, the emissions in each upwind State that contribute significantly to nonattainment are identified as being those emissions that can be eliminated through highly cost-effective controls.

In the NO_X SIP Call, EPA relied primarily on the application of highly cost-effective controls in determining the amount of emissions that the affected States were required to eliminate. Specifically, EPA developed a reference list of the average cost effectiveness of recently promulgated or proposed controls, and compared the cost effectiveness of those controls to the cost effectiveness of the NO_X SIP Call controls under consideration. In addition, EPA considered several other factors, including the fact that downwind nonattainment areas had already implemented ozone controls but upwind areas generally had not, the fact that some otherwise required local controls would be less cost-effective than the regional controls, and the overall ambient effects of the reductions required in the NO_X SIP Call (63 FR 57399–57403; October 27, 1998).

i. Highly Cost-Effective Controls

In the NO_X SIP Call, EPA presented control costs in 1990 dollars (1990$). For the electric power industry, these expenditures were the increase in annual electric generation production costs in the control region that result from the rule. In the CAIR NPR, SNPR, and today's final action, EPA presents the same type of electric generation as well as other costs in 1999$, and rounds all values related to the cost per ton of air emissions controls to the nearest 100 dollars.

In the NO_X SIP Call, EPA's decision on the amount of required NO_X emissions reductions was that this amount must be computed on the assumption of implementing highly cost-effective controls. The determination of what constituted highly cost effective controls was described as a two-part process: (1) The setting of a dollar-limit upper bound of highly cost-effective emissions reductions; and (2) a determination of what level of control below this upper-bound was appropriate based upon achievability and other factors.

With respect to setting the upper bound of potential highly cost-effective controls, EPA determined this level on the basis of average cost effectiveness (the average cost per ton of pollutant removed). The EPA explained that it relied on average cost effectiveness for two reasons:

> Since EPA's determination for the core group of sources is based on the adoption of a broad-based trading program, average cost effectiveness serves as an adequate measure across sources because sources with high marginal costs will be able to take advantage of this program to lower their costs. In addition, average cost-effectiveness estimates are readily available for other recently adopted NO_X control measures (63 FR 57399).

At that time, EPA acknowledged that average cost effectiveness did not directly address the fact that certain units might have higher costs relative to the average cost of reduction (*e.g.*, units with lower capacity factors tend to have higher costs):

> [I]ncremental cost effectiveness helps to identify whether a more stringent control option imposes much higher costs relative to the average cost per ton for further control. The use of an average cost effectiveness measure may not fully reveal costly incremental requirements where control options achieve large reductions in emissions (relative to the baseline) (63 FR 57399).

Examination of marginal cost effectiveness—which examines what the cost would be of the next ton of reduction after the defined control level—would fill this gap. However, for the NO_X SIP Call rulemaking, adequate information concerning marginal cost effectiveness was not available.

For the NO_X SIP Call, to determine the average cost effectiveness that should be considered to be highly cost effective, EPA developed a "reference list" of NO_X emissions controls that are available and of comparable cost to other recently undertaken or planned NO_X measures. The EPA explained that "the cost effectiveness of measures that EPA or States have adopted, or proposed to adopt, forms a good reference point for determining which of the available additional NO_X control measures can most easily be implemented by upwind States whose emissions impact downwind nonattainment problems." (63 FR 57400). The EPA explained that the measures on the reference list had already been implemented or were planned to be implemented, and therefore could be assumed to be less expensive than other measures to be implemented in the future. The EPA found that the costs of the measures on the reference list approached but were below $2,000 per ton (1990$). The EPA concluded that "controls with an average cost effectiveness [of] less than $2,000 [1990$, or $2,500 (1999$)] per ton of NO_X removed [should be considered] to be highly cost-effective." (63 FR 57400). Notably, the reference costs were taken from the supporting analyses used for the regulatory actions covering the NO_X pollution controls—they are what regulatory decision makers and the public believed were the control costs.

Mindful of this $2,000 limit [1990$, or $2,500 (1999$)], EPA considered a control level that would have resulted in estimated average costs of approximately $1,800 (1990$) per ton. However, EPA concluded that because the corresponding level of controls—nominally a 0.12 lb/mmBtu control level—was not well enough established, EPA was "not as confident about the robustness" of the cost estimates. Moreover, EPA expressed concern that its "level of comfort" was not as high as

it would have liked that the nominal 0.12 lb/mmBtu control level "will not lead to installation of SCR technology at a level and in a manner that will be difficult to implement or result in reliability problems for electric power generation" (63 FR 57401).

Accordingly, EPA selected the next control level that it had evaluated—a nominal 0.15 lb/mmBtu level—which would result in an average cost of approximately $1,500 [1990$, or $1,900 (1999$)] per ton. The EPA determined that this control level did not present the uncertainty concerns associated with the 0.12 level. The EPA added, in this 1998 rule: "With a strong need to implement a program by 2003 that is recognized by the States as practical, necessary, and broadly accepted as highly cost-effective, the Agency has decided to base the emissions budgets for EGUs on a 0.15 * * * level." (63 FR 57401—57402). The EPA summarized its approach as determining "the required emission levels * * * based on the application of NO_X controls that achieve the greatest feasible emissions reduction while still falling within a cost-per-ton reduced range that EPA considers to be highly cost-effective.* * *" (63 FR 57399).

The bulk of the cost for reducing NO_X emissions for EGUs is in the capital investment in the control equipment, which would be the same whether controls are installed for ozone season only, or for annual controls. The increased costs to run the equipment annually instead of only in the ozone season is relatively small. Although the NO_X SIP Call is an ozone season NO_X reduction program, most of the NO_X control costs on the reference list are for annual reductions. If the NO_X SIP Call were an annual program instead of seasonal, its average control costs would be lower, relative to the annual control costs in the reference list.

ii. Other Factors

In the NO_X SIP Call, although considering air quality and cost to be the primary factors for determining significant contribution, EPA identified several other factors that it generally considered. As one factor, EPA reviewed "overall considerations of fairness related to the control regimes required of the downwind and upwind areas," particularly, the fact that the major urban nonattainment areas in the East had implemented controls on virtually all portions of their inventory of ozone precursors, but upwind sources had not implemented reductions intended to reduce their impacts downwind (63 FR 57404).

As another factor, EPA generally considered "the cost effectiveness of additional local reductions in the * * * ozone nonattainment areas." The EPA included in the record information that nationally, on average, additional local measures would cost more than the cost of the upwind controls required under the NO_X SIP Call. This consideration further indicated that the regional controls under the NO_X SIP Call were highly cost effective (63 FR 57404).

In addition, EPA conducted air quality modeling to determine the impact of the controls, and found that they benefitted the downwind areas without being more than necessary for those areas to attain (63 FR 57403—57404).

c. Proposed Criteria for Emissions Reduction Requirements

i. General Criteria

In the CAIR NPR, EPA proposed criteria for determining the appropriate levels of annual emissions reductions for SO_2 and NO_X and ozone-season emissions reductions for NO_X. The EPA stated that it considers a variety of factors in evaluating the source categories from which highly cost-effective reductions may be available and the level of reduction assumed from that sector. These include:

- The availability of information,
- The identification of source categories emitting relatively large amounts of the relevant emissions,
- The performance and applicability of control measures,
- The cost effectiveness of control measures, and
- Engineering and financial factors that affect the availability of control measures (69 FR 4611).

Further, EPA stated that overall, "We are striving * * * to set up a reasonable balance of regional and local controls to provide a cost-effective and equitable governmental approach to attainment with the NAAQS for fine particles and ozone." (69 FR 4612)

The EPA has used these types of criteria in a number of efforts to develop regional and national strategies to reduce interstate transport of SO_2 and NO_X. Starting in 1996, EPA performed analysis and engaged in dialogue with power companies, States, environmental groups and other interested groups in the Clean Air Power Initiative (CAPI).[53] In that study of national emission reduction strategies, EPA initially considered an emissions cap based on a 50 percent reduction in SO_2 emissions from title IV levels (*i.e.*, 4.5 million tons nationwide) in 2010. For NO_X, EPA initially looked at ozone season and non-ozone season caps. Commencing in 2000, the ozone season emissions cap would be based on an emission rate of 0.20 lb/mmBtu, and in 2005, the ozone season cap would be reduced to a level based on 0.15 lb/mmBtu (these cap levels would be similar to the phased caps adopted by the Ozone Transport Commission (OTC) States). The non-ozone season cap would be based on the proposed title IV phase II NO_X rule. The EPA also considered other options in the CAPI study, including setting NO_X caps based on emission rates of 0.20 lb/mmBtu and 0.25 lb/mmBtu; setting NO_X caps based on rates of 0.15 lb/mmBtu and 0.20 lb/mmBtu but lowering the SO_2 allowance cap by 60 percent instead of 50 percent; and, keeping a NO_X cap based on a rate of 0.15 lb/mmBtu but lowering the SO_2 allowance cap by 50 percent in 2005 instead of in 2010.

The EPA did a follow-up study in 1999 and discussed those results with various stakeholder groups, as well.[54] That study considered a variety of SO_2 emission caps ranging from a 40 percent reduction from title IV cap levels in 2010 to a 55 percent reduction from title IV cap levels in 2010. The 1999 study did not consider additional reductions in NO_X emissions beyond those required under the NO_X SIP Call.

In the last several years, EPA has performed significant additional analysis in support of the proposed Clear Skies Act.[55] That legislation, proposed in 2002 and 2003, would include nationwide SO_2 caps of 4.5 million tons in 2010 and 3.0 million tons in 2018 (*i.e.*, 50 percent and 67 percent reductions from title IV cap levels). The Clear Skies Act also includes a two-phase, two-zone NO_X emission cap program, with the first phase in 2008 and the second phase in 2018. In the 2003 legislation, the first phase NO_X caps would result in effective NO_X emissions rates of 0.16 lb/mmBtu in the east and 0.20 lb/mmBtu in the west, and the second phase would result in effective emission rates of 0.12 lb/mmBtu in the east and 0.20 lb/mmBtu in the west.

[53] U.S. Environmental Protection Agency, Office of Air and Radiation, EPA's Clean Air Power Initiative, October 1996.

[54] U.S. Environmental Protection Agency, Office of Air and Radiation, Analysis of Emission Reduction Options for the Electric Power Industry, March 1999.

[55] EPA's Clear Skies Act analysis is on the web at: *http://www.epa.gov/air/clearskies/technical.html.*

ii. Reliance on Average and Marginal Cost Effectiveness

In the CAIR NPR, EPA supported the conclusion that its emissions caps are highly cost effective based upon "(1) comparison to the average cost effectiveness of other regulatory actions and (2) comparison to the marginal cost effectiveness of other regulatory actions." (69 FR 4585). We supplemented these comparisons of cost-effectiveness tables with an auxiliary evaluation of the marginal costs curves, which allowed us to show that the selected control levels would be "below the point at which there would be significant diminishing returns on the dollars spent for pollution control." (69 FR 4614).

Although in the NO_X SIP Call, EPA based the required controls on average cost alone, in today's rule, EPA uses both average and marginal costs, including an evaluation of the marginal cost curves. At the time of the NO_X SIP Call, marginal cost information was not as readily available. Today, such information is available for both SO_2 and NO_X controls, although marginal cost information remains more limited and EPA has had to specifically develop marginal cost estimates for use in this rulemaking.

Marginal costs are a useful measure of cost effectiveness because they indicate how much any additional level of control at the margin will cost relative to other actions that are available. Using both average and marginal control costs, provides a more complete picture of the costs of controls than using average costs alone. Average costs provide a means for a straightforward comparison between the CAIR and other emissions reductions programs for which average costs are generally the only type of costs available. Where marginal cost information is available, it enables EPA to compare the costs of the CAIR at the stringency level being considered to the costs of the last increment of control in other programs. Moreover, evaluation of marginal cost curves allows us to corroborate that the selected level of stringency of the selected program stops short of the point where the returns begin to diminish significantly.

Projected marginal cost information for controlling emissions from EGUs is now available for some State programs, because EPA includes the programs in its base case power sector modeling using the IPM to develop the incremental costs of electricity production for the CAIR. Marginal EGU control costs from State programs modeled using the IPM were compared to projected marginal EGU control costs under the CAIR, as discussed in more detail below.

3. What Are the Most Significant Comments That EPA Received About Its Proposed Methodology for Determining the Amounts of SO_2 and NO_X Emissions That Must Be Eliminated, and What Are EPA's Responses?

Some commenters took issue with EPA's reliance on cost-per-ton-of-emissions-reductions as the metric for determining cost effectiveness. These commenters observed that this metric does not take into account that any given ton of pollutant reduction may have different impacts on ambient concentration and human exposure. Some of these commenters advocated use of a metric based on cost per unit of pollutant concentration reduced. Another stated that EPA should account for cost effectiveness based on geographical location relative to the area of nonattainment.

Still other commenters took a contrasting view. They argued that a metric based on cost-per-ambient-impact might be useful in justifying control cost effectiveness for source categories within an individual nonattainment area as part of an attainment SIP, but not for evaluating costs of controlling long-range transport. These commenters stated that it is impractical to calculate cost effectiveness of control on the basis of cost per unit reduction in ambient concentration. One queried: "Where would the ambient reduction be measured? 100 miles downwind? 1,500 miles downwind?"

The EPA agrees that optimally, the cost-per-ambient-impact of controls could play a major role in determining upwind control obligations (although equitable considerations and other factors identified in the NO_X SIP Call rulemaking and today's action may also play a role). The EPA recognized the potential importance of this factor during the NO_X SIP Call rulemaking and endeavored to develop technical information to support it. However, in that rulemaking, EPA was not able to develop an approach to quantify, with sufficient accuracy, cost-per-ambient impact because the NO_X SIP Call region was large—covering approximately half of the continental U.S. and including approximately half the States—and many upwind States with different emissions inventories had widely varied impacts on many different nonattainment areas downwind.

This problem—the complexity of the task and the dearth of analytic tools—remains today for both $PM_{2.5}$ and 8-hour ozone regional transport. Not surprisingly, no commenter presented to EPA the analytic tools, which we would expect would consist of a complex, computerized program that could integrate, on a State-by-State basis, both control costs and ambient impacts by each State on each of its downwind receptors under the CAIR control scenario.

In the absence of a scientifically defensible, practicable method for implementing a program design approach based on the cost-per-ambient-impact of emissions reductions, EPA is not able to employ such an approach. However, EPA believes it appropriate to continue to examine ways to develop such an approach for future use.

A few commenters suggested that EPA should use a cost-benefit analysis for determining reduction levels. One noted that cost-benefit analysis can help find the reduction levels that maximize societal net benefit (benefits minus costs), and suggested the Agency should compare the marginal cost of each ton of pollutant reduced to the marginal benefit achieved, as well as compare the total costs to the total benefits. Another stated that an optimal allocation of resources is where the marginal cost equals the marginal benefit, and observed that comparing the average cost to the average benefit of the controls proposed in the CAIR NPR yields an average benefit significantly higher than the average cost. This commenter concluded that EPA should require controls beyond the controls described in the NPR as highly cost effective.

Although EPA strongly agrees that examination of costs and benefits is very useful, in today's rulemaking, EPA does not interpret CAA section 110(a)(2)(D) to base the amount of emissions reductions on benefits other than progress towards attainment of the $PM_{2.5}$ or the 8-hour ozone NAAQS. The EPA's interpretation does, however, use cost effectiveness per ton of pollutant reduced, and we are using that analytic tool for setting SO_2 and NO_X emission reduction requirements. Additionally, EPA has prepared a cost-benefit analysis to inform the Agency and public of the many other important impacts of this rulemaking.

A few commenters suggested that the Agency should set its NO_X and SO_2 reduction requirements based on Best Available Control Technology (BACT) emission rates for EGUs. Although not clearly stated, the commenters appear to suggest BACT level controls for both existing and new units.

The emission reduction requirements that EPA determined are based on the application of highly cost-effective

controls that are a step that the Agency is taking at this time to eliminate emissions that contribute significantly to nonattainment of the ozone and fine particle NAAQS. As explained elsewhere, this step is reasonable in light of the current status of implementation for those NAAQS.

Basing emission reduction requirements on a presumption of BACT emission rates across the board would require scrubbers and SCRs on all coal-fired units and SCRs on all gas-fired and oil-fired units. The cost of these controls would vary considerably from source to source, be expensive for many sources, and may cause substantial fuel switching to natural gas and closure of smaller coal-fired units. Having considered this suggestion for deeper regional reductions that would not be as cost effective as the highly cost-effective reductions in today's rule, EPA believes that a more tailored approach, such as the CAIR level control as well as local controls under SIPs (where necessary), is a more reasonable approach to achieving the level of ambient improvement needed for attainment throughout the United States.

4. The EPA's Evaluation of Highly Cost-Effective SO_2 and NO_X Emissions Reductions Based on Controlling EGUs

a. SO_2 Emissions Reductions Requirements

i. CAIR Proposal for SO_2

The NPR focused primarily on determining highly cost-effective amounts of emissions reductions based on, as in the NO_X SIP Call, comparison to reference lists of the cost effectiveness of other regulatory controls. In the NPR, EPA developed reference lists for both the average cost effectiveness and the marginal cost effectiveness of those other controls. These reference lists indicated that the average annual costs per ton of SO_2 removed ranged from $500 to $2,100; and marginal costs of SO_2 removal ranged from $800 to $2,200.

Moreover, EPA further considered the cost effectiveness of alternative stringency levels for this regulatory proposal. That is, EPA examined changes in the marginal cost curve at varying levels of emissions reductions. The EPA determined in the NPR that the "knee" in the marginal cost-effectiveness curve—the point at which the marginal cost per ton of SO_2 removed begins to increase at a noticeably higher rate—appears to start above $1,200 per ton (69 FR 4613—4615).

In the NPR, EPA then provided further analysis of a two-phase SO_2 reduction program. The final (second) phase, in 2015, would reduce SO_2 emissions in the CAIR region by the amount that results from making a 65 percent reduction from the title IV Phase II allowance levels (taking into consideration the existing bank of title IV SO_2 allowances). The first phase, in 2010, would reduce SO_2 emissions in the CAIR region by a lesser amount, *i.e.*, a 50 percent reduction from title IV Phase II allowance levels (again, taking into consideration the banked title IV SO_2 allowances). The EPA developed this target SO_2 control level for further evaluation because, based on all of the earlier work performed on multi-pollutant power plant reduction programs and general consideration, with technical support, of overall emissions reductions, costs to industry and the general public, ambient improvement, and consistency with the emerging $PM_{2.5}$ implementation program, we believed it would meet the criteria set forth above.

Then, EPA conducted cost analyses of this control level using the IPM as well as additional analysis of the implications of this control level to determine if it did indeed meet those criteria. The IPM analysis considered the increase in annual electric generation production costs in the CAIR region that result from the rule. The EPA evaluated the cost effectiveness of the final phase (2015) cap to determine if it is highly cost effective; and, we also evaluated the cost effectiveness of the 2010 cap. The EPA used the IPM to estimate cost effectiveness of the CAIR in the future. The IPM incorporates projections of future electricity demand, and thus heat input growth. The EPA's IPM analyses for the CAIR includes all fossil fuel-fired EGUs with capacity greater than 25 MW. A description of the IPM is included elsewhere in this preamble, and a detailed model documentation is in the docket.

The SO_2 annual control costs that were presented in the CAIR NPR were average costs of $700 per ton and $800 per ton for years 2010 and 2015, respectively, and marginal costs of $700 per ton and $1,000 per ton for years 2010 and 2015. In addition, the NPR included the results of sensitivity analyses that examined costs of the proposed SO_2 controls based on the Energy Information Administration's projections for electricity growth and natural gas prices. These sensitivity analyses showed marginal SO_2 control costs of $900 per ton and $1,100 per ton for years 2010 and 2015, respectively. The EPA proposed to consider the SO_2 emissions reductions proposed in the NPR as highly cost effective because they were consistent with the lower end of the reference list range of cost per ton of SO_2 reduction for controls on both an average and a marginal cost basis (69 FR 4613—4615).

ii. Analysis of SO_2 Emission Reduction Requirements for Today's Final Rule

(I) Reference Lists of Cost-Effective SO_2 Controls

For today's action, EPA updated the reference list of controls included in the NPR of the average and marginal costs per ton of recent SO_2 control actions. The EPA systematically developed a list of cost information from both recent actions and proposed actions. The EPA compiled cost information for actions taken by the Agency, and examined the public comments submitted after the NPR was published, to identify all available control cost information to provide the updated reference list for today's preamble. The updated reference list includes both average and marginal costs of control, to which EPA compares the CAIR control costs, and the list represents what regulatory decision makers and/or the public believes are the control costs.[56]

Table IV–3 provides average costs of SO_2 controls. This table includes average costs for recent BACT permitting decisions for SO_2. Under EPA's New Source Review (NSR) program, if a company is planning to build a new plant or modify an existing plant such that a significant net increase in emissions will occur, the company must obtain a NSR permit that addresses controls for air emissions. BACT is the type of control required by the NSR program for existing sources in attainment areas. The BACT decisions are determined on a case-by-case basis, usually by State or local permitting agencies, and reflect consideration of average and incremental cost effectiveness. These decisions are relevant for EPA's reference list of average costs of SO_2 controls, because they represent cost-effective controls that have been demonstrated.

[56] The updated reference list includes estimated average costs for SO_2 reductions from EGUs under best available retrofit technology (BART) requirements. The BART rule was proposed and has not been finalized (69 FR 25184; May 5, 2004).

TABLE IV–3.—AVERAGE COSTS PER TON OF ANNUAL SO_2 CONTROLS

SO_2 control action	Average cost per ton
Best Available Control Technology (BACT) Determinations	[1] $400–$2,100
Nonroad Diesel Engines and Fuel	[2] $800
Proposed Best Available Retrofit Technology (BART) for Electric Power Sector	[3] $2,600–$3,400

[1] These numbers reflect a range of cost-effectiveness data entered into EPA's RACT/BACT/LAER Clearinghouse (RBLC) for add-on SO_2 controls (*www.epa.gov/ttn/catc/*). We identified actions in the data base for large, utility-scale, coal-fired boiler units for which cost effectiveness data were reported. The range of costs shown here is for boilers ranging from 30 MW to an estimated 790 MW (we used a conversion factor of 10 mmBtu/hr = 1 MW for units for which size was reported in mmBtu/hr). Emission limits for these actions ranged from 0.10 lb/mmBtu to 0.27 lb/mmBtu. Add-on controls reported for these units are dry or wet scrubbers (in one case with added alkali and in one case with a baghouse). Where the dollar-year was not reported we assumed 1999 dollars. The cost range presented in the NPR was $500–$2,100–today's range includes additional BACT costs that were entered into the clearinghouse after the NPR was published.

[2] Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel; Final Rule (69 FR 39131; June 29, 2004). The value in this table represents the long-term cost per ton of emissions reduced from the total fuel and engine program (cost per ton of emissions reduced in the year 2030). 1999$ per ton.

[3] The EPA IPM modeling 2004, available in the docket. The EPA modeled the Regional Haze Requirements as source specific limits (90 percent SO_2 reduction or 0.1 lb/mmBtu rate; except the five state WRAP region for which we did not model SO_2 controls beyond what is done for the WRAP cap in the base case modeling). Estimated average costs based on this modeling are $2,600 per ton in 2015 and $3,400 per ton in 2020. 1999$ per ton.

Table IV–4 provides the marginal cost per ton of recent State and regional decisions for annual SO_2 controls.

TABLE IV–4.—MARGINAL COSTS PER TON OF ANNUAL SO_2 CONTROLS

SO_2 control action	Marginal cost per ton
New Hampshire Rule	[1] $600
WRAP Regional SO_2 Trading Program	[2] $1,100–$2,200

[1] The EPA IPM base case modeling August 2004, available in the docket. (1999$ per ton). We modeled New Hampshire's State Bill ENV-A2900, which caps SO_2 emissions at all existing fossil steam units.

[2] "An Assessment of Critical Mass for the Regional SO_2 Trading Program," prepared for Western Regional Air Partnership Market Trading Forum by ICF Consulting Group, September 27, 2002, available in the docket. This analysis looked at the implications of one or more States choosing to opt-out of the WRAP regional SO_2 trading program. (1999$ per ton)

(II) Cost Effectiveness of the CAIR Annual SO_2 Reductions

In the NPR, EPA evaluated an annual SO_2 control strategy based on a specified level of emissions reductions from EGUs. Available information indicated that emissions reductions from this industry would be the most cost effective. (As noted elsewhere, EPA considered control strategies for other source categories, but concluded that they would not qualify as highly cost-effective controls.) Of course, under today's rule, although EPA calculates the amount of emissions reductions States must achieve by evaluation of the EGU control strategy, States remain free to achieve those reductions by implementing controls on any sources they wish.

For today's action, EPA updated the predicted annual SO_2 control costs included in the NPR. The EPA analyzed the costs of the CAIR using an updated version of the IPM (documentation for the IPM update is in the docket). Further, EPA modified the modeling to match the final CAIR strategy (see section IV.A.1 for a description of EPA's CAIR IPM modeling).

The EPA also updated its analysis of the sensitivity of the marginal cost results to assumptions of higher electric growth and natural gas prices than we used in the base case. These sensitivity analyses were based on the Energy Information Administration's Annual Energy Outlook for 2004.[57]

In determining whether our control strategy is highly cost effective, EPA believes it is important to account for the variable levels of cost effectiveness that these sensitivity analyses indicate may occur if electricity demand or natural gas prices are appreciably higher than assumed in the IPM. Those two factors are key determinants of control costs and, over the relatively long implementation period provided under today's action, a meaningful degree of risk arises that these factors may well vary to the extent indicated by the sensitivity analyses. As a result, EPA wanted to examine the marginal costs that would occur under the scenarios modeled in the sensitivity analyses to see how they differed from the costs using EPA's assumptions.

Table IV–5 provides the average and marginal costs of annual SO_2 reductions under the CAIR for 2010 and 2015. (When presenting estimated CAIR control costs in section IV of this preamble, EPA uses "Main Case" to indicate the primary CAIR IPM analyses, as differentiated from other IPM analyses such as sensitivity runs used to examine the impacts of varying assumptions about natural gas price and electric growth.)

TABLE IV–5.—ESTIMATED COSTS PER TONS OF SO_2 CONTROLLED UNDER CAIR, CAP LEVELS BEGINNING IN 2010 AND 2015 [1]

Type of cost effectiveness	2010	2015
Average Cost—Main Case	$500	$700
Marginal Cost—Main Case	700	1,000

[57] The EPA used the difference between EIA's estimates for well-head natural gas prices and minemouth coal prices to determine the sensitivity of IPM's results to higher natural gas prices. The EPA describes this sensitivity analysis as "EIA natural gas prices". For electric demand, we replaced EPA's assumed annual growth of 1.6 percent with EIA's projection of annual growth of 1.8 percent.

TABLE IV–5.—ESTIMATED COSTS PER TONS OF SO_2 CONTROLLED UNDER CAIR, CAP LEVELS BEGINNING IN 2010 AND 2015 [1]—Continued

Type of cost effectiveness	2010	2015
Sensitivity Analysis: Marginal Cost Using EIA Electric Growth and Natural Gas Prices	800	1,200

[1] The EPA IPM modeling 2004, available in the docket. $1999 per ton.

These estimated SO_2 control costs under the CAIR reflect annual EGU SO_2 caps of 3.6 million tons in 2010 and 2.5 million tons in 2015 within the CAIR region. Based on IPM modeling, EPA projects that SO_2 emissions in the CAIR region will be about 5.1 million tons in 2010 and 4.0 million tons in 2015. The projected emissions are above the cap levels because of the use of the existing title IV bank of SO_2 allowances. Average costs shown for 2015 are an estimate of the average cost per ton to achieve the total difference in projected emissions between the base case conditions and the CAIR in the year 2015 (the 2015 average costs are not based on the increment in reductions between 2010 and 2015). (A more detailed description of the final CAIR SO_2 and NO_X control requirements is provided below in today's preamble.)

(III) SO_2 Cost Comparison for CAIR Requirements

The EPA believes that if an SO_2 control strategy has a cost effectiveness that is at the low end of the updated reference tables, the approach should be considered to be highly cost effective. The costs in the reference range should be considered to be cost effective because they represent actions that have already been taken to reduce emissions. In deciding to require these actions, policymakers at the local, State and Federal levels have determined them to be cost-effective reductions to limit or reduce emissions. Thus, costs at the bottom of the range must necessarily be considered highly cost effective.

Today's action requires SO_2 emissions reductions (or an EGU emissions cap) in 2015. The EPA has determined that those emissions reductions are highly cost effective. In addition, today's action requires that some of those SO_2 emissions reductions (or a higher EGU emissions cap) be implemented by 2010. The EPA has examined the cost effectiveness of implementing those earlier emissions reductions (or cap) by 2010, and determined that they are also highly cost effective.

The cost of the SO_2 reductions required under today's action—if the States choose to implement those reductions through EGUs, for which the most cost-effective reductions are available—on average and at the margin, are at the lower end of the range of cost effectiveness of other, recent SO_2 control requirements.[58] This is true for our analysis of both the costs EPA generally expects as well as the somewhat higher costs that would result from higher than expected electricity demand and natural gas prices, as indicated in the sensitivity analyses that EPA has done.

Specifically, the average cost effectiveness of the SO_2 requirements is $700 per ton removed in 2015. This amount falls toward the low end of the reference range of average costs per ton removed of $400 to $3,400. Similarly, the marginal cost effectiveness of the SO_2 requirements ranges from $1,000 to $1,200 for 2015 (with the higher end of the range based on the sensitivity analyses). These amounts fall toward the lower end of the reference range of marginal cost per ton removed of $600 to $2,200.

The EPA believes that selecting as highly cost-effective amounts toward the lower end of our average and marginal cost ranges for SO_2 and NO_X control is appropriate because today's rulemaking is an early step in the process of addressing $PM_{2.5}$ and 8-hour ozone nonattainment and maintenance requirements. The CAA requires States to submit section 110(a)(2)(D) plans to address interstate transport, and overall attainment plans to ensure the NAAQS are met in local areas. By taking the early step of finalizing the CAIR, we are requiring a very substantial air emission reduction that addresses interstate transport of $PM_{2.5}$ as well as a further reduction in interstate transport of ozone beyond that required by the NO_X SIP Call Rule. Much of the air quality improvement resulting from reduced transport is likely to occur through broad and deep emissions reductions from the electric power sector, which has been a major part of the transport problem. Other air quality benefits will occur as the result of Federal mobile source regulations for new sources, which cover passenger vehicles and light trucks, heavy-duty trucks and buses, and non-road diesel equipment.

Against this backdrop of Federal actions that lower air emissions (as well as some substantial State control programs), States will develop plans designed to achieve the standards in their local nonattainment areas. The EPA has not yet promulgated rules interpreting the CAA's requirements for SIPs for $PM_{2.5}$ and ozone nonattainment areas,[59] nor have States developed plans to demonstrate attainment. As a result, there are significant uncertainties regarding potential reductions and control costs associated with State plans. We believe that some areas are likely to attain the standards in the near term through early CAIR reductions and local controls that have costs per ton similar to the levels we have determined to be highly cost effective. We expect that other areas with higher $PM_{2.5}$ or ozone levels will determine through the attainment planning process that they need greater emissions reductions, at higher costs per ton, to reach attainment within the CAA's timeframes. For those areas, States will need to assess targeted measures for achieving local attainment in a cost-effective (but not necessarily highly cost-effective) manner, in combination with the CAIR's significant reductions. Given the uncertainties that exist at this early stage of the implementation process, EPA believes this rule is a rational approach to determining the highly cost-effective reductions in $PM_{2.5}$ and ozone precursors that should be required for interstate transport purposes.

As discussed above, the Agency believes this approach is consistent with our action in the NO_X SIP Call. While the cost level selected for the NO_X SIP Call was not at the low end of the reference range of costs, if the NO_X SIP Call costs were for annual rather than seasonal controls they would have been lower relative to the annual control costs on the list. This would make the relationship between the cost of the NO_X SIP Call and the reference costs used in that rulemaking, more similar to relative costs of CAIR compared to its reference lists. Also, significant local controls for meeting the 1-hour ozone standard had already been adopted in many areas.

Although EPA's primary cost-effectiveness determination is for the 2015 emissions reductions levels, the Agency also evaluated the cost effectiveness of the interim phase control levels to ensure that they were also highly cost effective. For the SO_2 requirements for 2010, the average cost effectiveness is $500 per ton removed, and the marginal cost effectiveness

[58] The updated reference list of average SO_2 control costs includes estimated average EGU costs under BART. The BART rule has been proposed but not finalized (69 FR 25184; May 5, 2004).

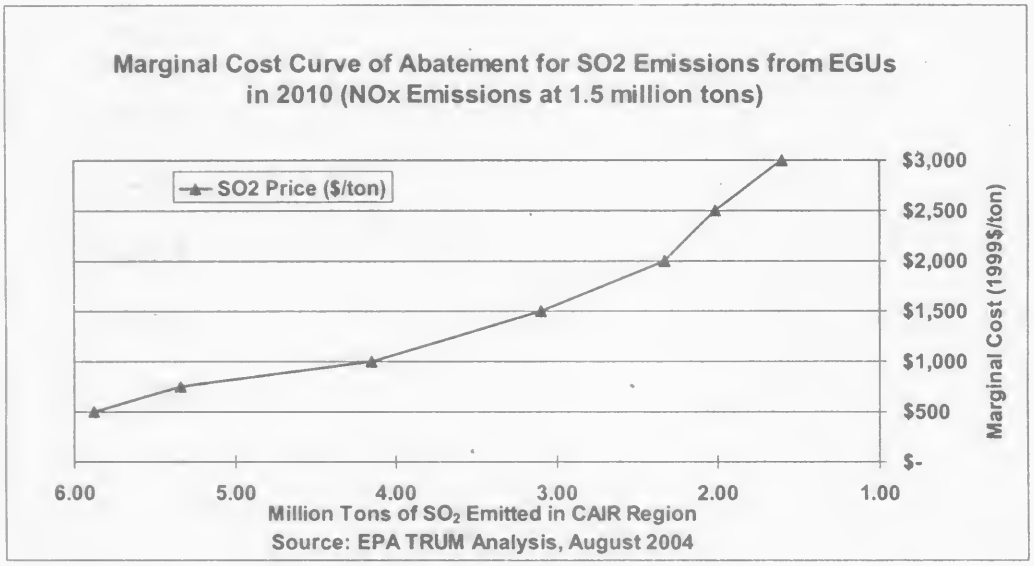
[59] EPA did promulgate Phase I of the ozone implementation rule in April 2004 (69 FR 23951; April 30, 2004) but has not issued Phase II of the rule, which will interpret CAA requirements relating to local controls (*e.g.*, RACT, RACM, RFP).

ranges from $700 to $800. The 2010 costs indicate that the interim phase CAIR reductions are also highly cost-effective.

(IV) Cost Effectiveness: Marginal Cost Curves for SO_2 Control

As noted above, the Agency also considered another factor to corroborate its conclusion concerning the cost effectiveness of the selected levels of control:

Figure IV-1.

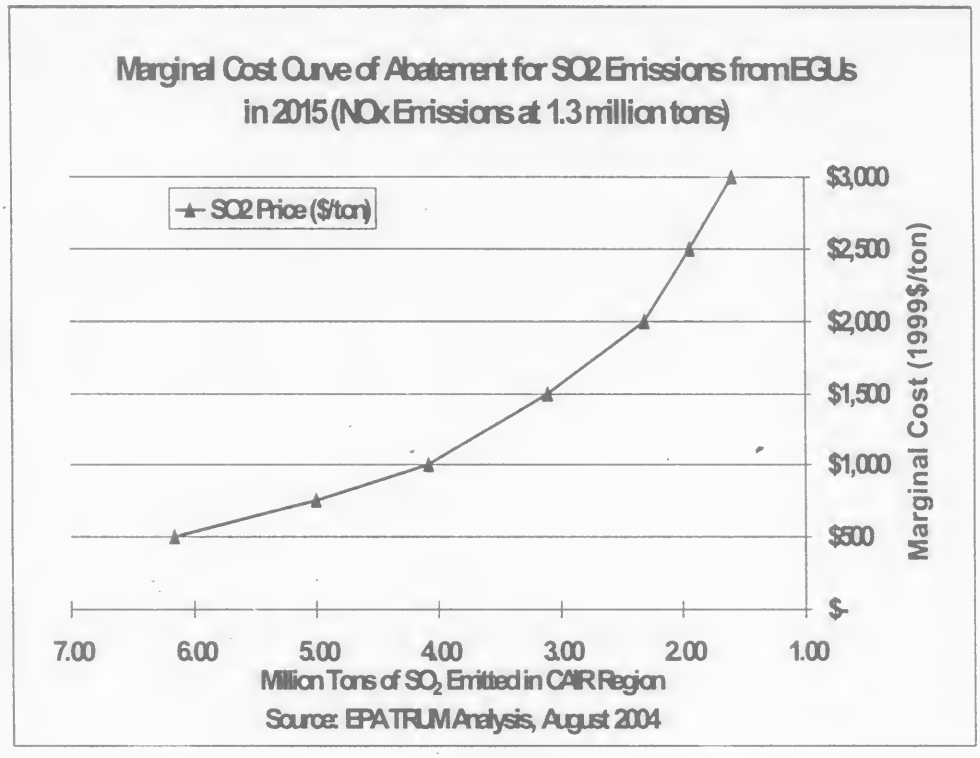


The cost effectiveness of alternative stringency levels for today's action. Specifically, EPA examined changes in the marginal cost curve at varying levels of emissions reductions for EGUs. Figure IV–1 shows that the "knee" in the 2010 marginal cost-effectiveness curve—the point where the cost of controlling a ton of SO_2 from EGUs is increasing at a noticeably higher rate—appears to occur at about $2,000 per ton of SO_2. Figure IV–2 shows that the "knee" in the 2015 marginal cost-effectiveness curve also appears to occur at about $2,000 per ton of SO_2. (As discussed above, the projected marginal costs of SO_2 reductions for the CAIR are $700 per ton in 2010 and $1,000 per ton in 2015.) The EPA used the Technology Retrofitting Updating Model (TRUM), a spreadsheet model based on the IPM, for this analysis. (The EPA based these marginal SO_2 cost-effectiveness curves on the electric growth and natural gas price assumptions in the main CAIR IPM modeling run. Marginal cost effectiveness curves based on other electric growth and natural gas price assumptions would look different, therefore it would not be appropriate to compare the curves here to the marginal costs based on the IPM modeling sensitivity run that used EIA assumptions.) These results make clear that this rule is very cost effective because the control level is below the point at which the cost begins to increase at a significantly higher rate.

In this manner, these results corroborate EPA's findings above concerning the cost effectiveness of the emissions reductions.[60]

[60] EPA is using the knee in the curve analysis solely to show that the required emissions reductions are very cost effective. The marginal cost curve reflects only emissions reduction and cost information, and not other considerations. We note that it might be reasonable in a particular regulatory action to require emissions reductions past the knee of the curve to reduce overall costs of meeting the NAAQS or to achieve benefits that exceed costs. It should be noted that similar analysis for other source categories may yield different curves.

Figure IV -2.



b. NO_X Emissions Reductions Requirements

i. The CAIR Proposal for NO_X and Subsequent Analyses for Regionwide Annual and Ozone Season NO_X Control Levels

In this section, EPA describes its proposed method for determining regionwide NO_X control levels and the method used for the final CAIR.

In the CAIR NPR, EPA updated the reference list included in the NO_X SIP Call for the average annual cost effectiveness of recent or proposed NO_X controls, and determined that these amounts ranged from approximately $200 to $2,800. In addition, in the NPR, EPA developed a reference list for marginal annual cost effectiveness for NO_X controls, and determined that these amounts ranged from approximately $1,400 to $3,000 (69 FR 4614—4615).

In the NPR, EPA proposed a two-phased annual NO_X control program, with a final phase in 2015 and a first phase in 2010. The regionwide emissions reduction requirements that EPA proposed—and the budget levels that would apply if all States chose to implement the reductions from EGUs—were based on using a combination of recent historical heat input and NO_X emissions rates for fossil fuel-fired EGUs. For historical heat input, EPA proposed determining the highest heat input from units affected by the Acid Rain Program for each affected State for the years 1999–2002. The EPA then summed this heat input for all of the States affected for annual NO_X reductions. For 2015, EPA calculated a proposed regionwide annual NO_X budget by multiplying this heat input by an emission rate of 0.125 lb/mmBtu, and for 2010 by multiplying by 0.15 lb/mmBtu.

In developing the CAIR NPR, when EPA considered the appropriate amount of annual SO_2 emissions reductions, EPA relied on the existing title IV annual SO_2 cap as a starting point. However, in considering the appropriate amount of NO_X reductions, the situation is different because title IV does not cap NO_X emissions. Therefore, EPA and the States have focused on emissions caps based on a combination of heat input and NO_X emission rates. Emission rates similar to the rates used to develop the CAIR NPR have been considered in the past. For example, the CAPI 1996 study, noted above, contemplated NO_X caps based on an emission rate of 0.15 lb/mmBtu (and other options based on NO_X rates of 0.20 lb/mmBtu and 0.25 lb/mmBtu). The NO_X SIP Call is based on an emission rate of 0.15 lb/mmBtu.

The methodology described in the NPR is best understood as the means for developing the target 2015 annual NO_X control level (or emissions budget) for further evaluation through IPM. The EPA developed this level mindful of its experience to date with the NO_X SIP Call and the earlier work EPA has performed on multi-pollutant power plant reduction programs. The EPA also considered available technical information on pollution controls, costs to industry and the general public, ambient air improvement, and consistency with the emerging $PM_{2.5}$ implementation program, in developing its target control level.

Recent advances in combustion control technology for NO_X reductions, as well as widespread use of selective catalytic reduction (SCR) on U.S. coal-fired EGU boilers achieving NO_X emission rates of 0.06 lb/mmBtu and below, provide evidence that even lower average NO_X emission rates are more highly cost-effective than rates considered in the past (based on analyzing EGUs), possibly on the order of 0.12 lb/mmBtu or less. The EPA developed the target annual NO_X control level (or emissions budget) with

the understanding that the evaluation of that level might indicate that average emission rates on the order of 0.12 lb/mmBtu or less might be highly cost effective for the final (2015) control phase, and an interim level resulting in an average emission rate of less than 0.15 lb/mmBtu might be feasible for the first phase.

The EPA did evaluate the target annual NO_X control levels (or emissions budgets) using the IPM. The EPA confirmed that the 2015 level is highly cost effective. The Agency also evaluated the cost effectiveness of the proposed 2010 cap to assure that the interim phase reductions would also be highly cost effective. The EPA's IPM analyses for the CAIR includes all fossil fuel-fired EGUs with generating capacity greater than 25 MW.

The proposed cap for the first phase was developed taking into consideration how much pollution control for NO_X and SO_2 could be installed without running into a shortage of skilled labor, in particular boilermakers (EPA's assumptions regarding boilermaker labor are described in section IV.C.2 of this preamble). The Agency focused on providing substantial reductions of both SO_2 and NO_X emissions at the outset of the proposed program, leading to significant retrofits of Flue Gas Desulfurization units (FGD) for SO_2 control and SCR for NO_X control.

In the NPR, EPA explained that using the highest Acid Rain Program heat input for each State to develop a regionwide heat input amount, rather than the average Acid Rain Program heat input, provided a cushion that represented a reasonable adjustment to reflect that there are some non-Acid Rain units that operate in these States that will be subject to the proposed CAIR emission reduction levels. The EPA explained that it did not use heat input data from non-Acid Rain units in the proposal because it did not have all the necessary data available at the time the NPR was developed.[61] Using the highest of recent years' Acid Rain Program heat input provided an approximation of the regionwide heat input, although it did not include heat input from non-Acid Rain sources. Multiplying the approximate recent heat input by 0.125 lb/mmBtu to develop a proposed regionwide annual 2015 NO_X cap could reasonably be expected to yield an average effective NO_X emission rate (considering all EGUs potentially affected by CAIR for annual reductions, not only the Acid Rain units, and considering growth in heat input) somewhat less than 0.125 lb/mmBtu. Likewise, multiplying the approximate recent heat input by 0.15 lb/mmBtu to develop a regionwide annual 2010 NO_X cap could reasonably be expected to yield an average effective NO_X emission rate for all CAIR units of about 0.15 lb/mmBtu or less.

Although EPA calculated—in essence, as a target level for further evaluation—the proposed regionwide annual NO_X control levels (or emissions budgets) based on heat input from only Acid Rain Program units, the Agency evaluated the cost effectiveness of the control levels using heat input from all EGUs that potentially would be affected by the proposed CAIR. The EPA evaluated cost effectiveness using the IPM, which includes both Acid Rain units and non-Acid Rain units. Further, the IPM incorporates assumptions for electricity demand growth, and thus heat input growth.

Specifically, EPA evaluated these target annual NO_X caps on EGUs for 2010 and 2015—and therefore the associated regionwide emissions reductions—using the IPM, which, in effect, demonstrated that these proposed NO_X emissions cap levels can be met using highly cost-effective controls with the expected levels of electricity demand in 2010 and 2015, respectively. Those expected levels of electricity demand are higher than the electricity demand during the 1999 to 2002 years upon which EPA based heat input; and as a result, the amount of heat input necessary to meet the projected electricity demand is expected to be higher than the amount that EPA developed for evaluation purposes through the method described above. The projected average future emissions rates that would be associated with the 2010 and 2015 heat input levels needed to meet electricity demand (coupled with the NO_X emissions budgets developed through the methodology described above) would be about 0.14 lb/mmBtu and 0.11 lb/mmBtu in 2010 and 2015, respectively.[62] These average rates would be for all units affected by annual NO_X controls under CAIR, including non-Acid Rain units. Thus, the heat input is projected to be higher in 2010 and 2015 than the recent historic heat input used to develop the target emissions budgets, and the projected NO_X emission rates in 2010 and 2015 are lower than the 0.15 lb/mmBtu and 0.125 lb/mmBtu rates that were used to develop the budgets. IPM determined the costs of meeting these average future NO_X emission rates of 0.14 lb/mmBtu and 0.11 lb/mmBtu. The EPA considers these emission rates to be highly cost-effective and feasible.

In the NPR, EPA proposed an interim (Phase I) annual NO_X phase in 2010 and a final (Phase II) annual NO_X phase in 2015. However, in today's final rule, EPA is promulgating a Phase I for NO_X in 2009 (with the Phase II for NO_X in 2015, as proposed). The EPA determined the regionwide NO_X control levels for 2009 and 2015 for today's final action using the same methodology as we used to determine proposed levels. The Agency evaluated the cost effectiveness of the final reduction requirements (and average NO_X emission rates) using IPM and determined them to be highly cost-effective, assuming controls on EGUs. The EPA's evaluation of the cost effectiveness of the emission reduction strategy we assumed in establishing the final CAIR control levels is discussed further below.

The average NO_X emission rates in the first and second phases of CAIR will be lower than the nominal emission rate on which the NO_X SIP Call was based, which was 0.15 lb/mmBtu. In the NO_X SIP Call, EPA also considered a control level based on a lower nominal emission rate, 0.12 lb/mmBtu. However, at that time the use of SCR was not sufficiently widespread to allow EPA to conclude that the controls necessary to meet a tighter cap could be installed in the required timeframe, without causing reliability problems for the electric power sector. Now, through the experience gained from the NO_X SIP Call, EPA has confidence that with SCR technology average emissions rates lower than the NO_X SIP Call nominal emission rate can be achieved on a regionwide basis.

In the CAIR NPR, after determining the regionwide control level and evaluating it to assure that it is highly cost-effective, the Agency then apportioned the regionwide budgets to the affected States. The EPA proposed to apportion regionwide NO_X budgets to individual States on the basis of each State's share of recent average heat input. In the NPR, EPA used the average share of Acid Rain Program heat input. However, as discussed in the SNPR and the NODA, in order to distribute more equitably to States their share of the regionwide NO_X budgets, EPA then

[61] The EPA does not collect annual heat input data from these non-Acid Rain units. EIA does collect heat input from such units, however there are some limitations to the data. First, there are no requirements specifying how the data should be collected or quality assured. Second, the data is collected on a plant-wide basis rather than on a unit-by-unit basis.

[62] These projected average NO_X emissions rates are from updated IPM modeling done in 2004. The IPM modeling done prior to the NPR also projected similar average emission rates, about 0.15 lb/mmBtu and 0.11 lb/mmBtu in 2010 and 2015, respectively.

considered each State's proportional share of recent average heat input using data from non-Acid Rain Program sources as well as Acid Rain Program sources. The EPA obtained EIA heat input data reported for non-Acid Rain sources and combined the EIA heat inputs with Acid Rain heat inputs to determine each State's share of combined average recent heat input.

The fact that EPA distributed the regionwide budget to individual States based on their proportional share of heat input from Acid Rain and non-Acid Rain units combined does not affect the determination of the regionwide budgets themselves. The regionwide budgets were determined to be highly cost-effective when tested for all units—both non-Acid Rain units as well as Acid Rain units—that would be affected by CAIR. (The EPA's method for apportioning regionwide NO_X budgets to States is discussed in more detail elsewhere in today's preamble. That discussion includes an explanation of the differences between the State budgets that were presented in the NPR, the SNPR, and the NODA. In addition, see the TSD entitled "Regional and State SO_2 and NO_X Emissions Budgets.")

In the NPR, EPA proposed that Connecticut contributed significantly to downwind ozone nonattainment, but not to $PM_{2.5}$ nonattainment. Thus, the Agency proposed that Connecticut would not be subject to an annual NO_X control requirement and was not included in the region proposed for annual controls. We proposed that Connecticut would be affected by an ozone season-only NO_X control level, and proposed to calculate Connecticut's ozone season control level in a parallel way to how the regionwide annual NO_X control levels were calculated. That is, EPA selected the highest of the same 4 years of (ozone season-only) heat input used for the regionwide budget calculation, and multiplied that heat input by the same NO_X emission rates used to calculate the regionwide control levels. Connecticut is the only State for which an ozone season budget was proposed.

The EPA used the same methodology for developing regionwide budgets for today's final rule as was proposed in the NPR. For the final CAIR, EPA found that 23 States and the District of Columbia contribute significantly to downwind $PM_{2.5}$ nonattainment and found that 25 States and the District of Columbia contribute significantly to downwind ozone nonattainment (section III in today's preamble describes the significance determinations). CAIR requires annual NO_X reductions in all States determined to contribute significantly to downwind $PM_{2.5}$ nonattainment, and requires ozone season NO_X reductions in all States determined to contribute significantly to downwind ozone nonattainment (many of the CAIR States are affected by both annual and ozone season NO_X reduction requirements). The final CAIR ozone season NO_X reductions are required in two phases, with Phase I commencing in 2009 and Phase II in 2015, the same years as the annual NO_X reduction requirements.

As described above, the Agency proposed ozone season NO_X reduction requirements for Connecticut, and did not propose separate ozone season reduction requirements in any other State. For today's final rule, EPA requires ozone season reductions in all States contributing significantly to downwind ozone nonattainment. The EPA determined regionwide ozone season NO_X control levels for the final CAIR using the same methodology as was used for the annual NO_X reduction requirements (which is the same method that was proposed for Connecticut's ozone season budget). That is, EPA determined the highest (ozone season) heat input from Acid Rain Program units for the years 1999–2002 for each State, then summed this heat input for all of the States affected for ozone season NO_X reductions. For the final 2015 control level, EPA calculated a regionwide ozone season NO_X budget by multiplying this heat input by an emission rate of 0.125 lb/mmBtu, and for 2009 by multiplying by 0.15 lb/mmBtu. The Agency evaluated the cost effectiveness of these ozone season NO_X control levels (and average NO_X emission rates) using IPM and determined them to be highly cost-effective, assuming controls on EGUs. The EPA's evaluation of the cost effectiveness of the final CAIR control requirements is discussed further below.

Based on EPA's analysis of proposed annual NO_X control levels, in the NPR the Agency presented average costs for annual NO_X control of $800 per ton and $700 per ton for 2010 and 2015, and marginal costs of $1,300 per ton and $1,500 per ton for 2010 and 2015. In the NPR, EPA also presented marginal costs of annual NO_X control from sensitivity analyses that used EIA assumptions for electricity growth and natural gas prices. Those marginal control costs were $1,300 per ton and $1,600 per ton for 2010 and 2015, respectively. The EPA also presented costs from a sensitivity model run that used EIA assumptions for electricity growth and natural gas price and higher SCR costs. These marginal control costs were $1,700 per ton and $2,200 per ton for 2010 and 2015, respectively.[63]

In the NPR, EPA also presented the average cost effectiveness for ozone season-only NO_X control of $1,000 per ton and $1,500 per ton for 2010 and 2015, respectively, and a marginal cost for ozone season-only control of $2,200 per ton and $2,600 per ton for 2010 and 2015. The EPA also presented average costs for the non-ozone season (remaining seven months of the year) control of $700 per ton and $500 per ton in 2010 and 2015, respectively. (As noted above, the capital costs of installing NO_X control equipment would be largely identical whether the equipment will be operated during the ozone season only or for the entire year. However, the amount of reductions would be less if the control equipment were operated only during the ozone season compared to annual operation.)

The EPA proposed the conclusion that these costs met the criteria for highly cost-effective emissions reductions for NO_X (69 FR 4613–4615).

As with SO_2, EPA also considered the cost effectiveness of alternative stringency levels for this regulatory proposal (examining changes in the marginal cost curve at varying levels of emission reductions).

ii. What Are the Most Significant Comments That EPA Received About Proposed NO_X Emission Reduction Requirements, and What Are EPA's Responses?

Some commenters expressed concern that EPA did not account for growth of heat input in calculating regionwide NO_X emissions budgets, noting that growth was used in the calculation of the regional budget for the NO_X SIP Call. Commenters suggest that, by not taking heat input growth into account, EPA developed regionwide budgets that are unduly stringent.

On the other hand, some commenters noted that they supported EPA's proposal to base regionwide budgets on historical heat input and did not want EPA to use growth projections for calculating regionwide NO_X emissions budgets. Some stated that using actual, historic heat input numbers would be more straightforward than using growth projections, and some pointed to complications with the growth projection methodologies used in the NO_X SIP Call.

The EPA recognizes that it employed a growth factor in the NO_X SIP Call.

[63] The control costs for this model sensitivity that were presented in the NPR were in error (69 FR 4615). The corrected costs from the sensitivity are as shown here.

There, EPA determined the amount of the regional emissions reductions and budgets by applying a growth factor to a historic heat input baseline. The DC Circuit, after first remanding that growth methodology for a better explanation, upheld it. *West Virginia* v. *EPA*, 362 F.3d 861 (DC Cir., 2004). See 67 FR 21 868 (May 1, 2002).

For CAIR, as described above, EPA developed a target level for the proposed NO_X regionwide cap based on recent historic heat input and assumed emission rates of 0.125 lb/mmBtu and 0.15 lb/mmBtu for 2015 and 2010, respectively. The EPA evaluated these target NO_X emissions levels using IPM, which indicated that those target caps—in conjunction with expected electricity demand for 2015 and 2010—would result from higher heat input levels and lower average emissions rates (about 0.11 lb/mmBtu and 0.14 lb/mmBtu for 2015 and 2010, respectively) than the amounts assumed in developing the target NO_X caps. Most importantly, IPM indicated the cost levels associated with those projected 2015 and 2010 average NO_X emission rates, and EPA has determined that those cost levels are highly cost-effective. For the final rule, EPA revised its analyses to reflect the 2009 initial NO_X control phase, and determined that the final CAIR requirements are highly cost-effective. The EPA's methodology, in which the CAIR emissions reductions are predicted to be cost-effective under conditions of projected electricity growth that, in turn, projects heat input growth, in effect accounts for heat input growth. Moreover, the amount of heat input growth is the amount determined by IPM, a state-of-the-art model of the electricity sector (detailed documentation for IPM is in the docket).

Some commenters suggested that EPA adjust the NO_X regionwide budget amounts to include heat input from non-Acid Rain units. For example, some suggested adding the non-Acid Rain unit heat input amounts that EPA used in apportioning regionwide NO_X budgets to the States, to the total regionwide heat inputs that EPA used to calculate regionwide NO_X budgets.

The regionwide budgets determined in the NPR were target levels developed as a starting point for further evaluation. The regionwide heat input amounts and NO_X emission rates used to develop target budget levels were inherently imprecise. As discussed above, IPM modeling indicates that the projected future heat input amounts (based on electricity growth) are greater than the recent historic regionwide amount used to develop the target budget levels, and the future average emission rates for all units affected by CAIR annual NO_X controls (including non-Acid Rain units) are less than the rates used to develop the target budget levels. IPM indicates that the target regionwide NO_X budget levels (and corresponding future average NO_X emission rates and heat input levels) are highly cost-effective for all CAIR units, including non-Acid Rain units. The EPA does not believe it is necessary to adjust the target regionwide budget levels to include the relatively small additional amount of heat input from non-Acid Rain units. The method the Agency used to develop target levels was not intended to be a precise methodology for determining the NO_X caps; rather, it was a reasonable method for selecting a target level to be evaluated further. Upon evaluation of the target level, EPA determined that it can be achieved using highly cost-effective controls for all affected EGUs, including non-Acid Rain units.

iii. Analysis of NO_X Emission Reduction Requirements for Today's Final Rule

(I) Reference Lists of Cost-Effective Controls

For today's action, EPA updated the reference list of controls included in the NPR of the average and marginal costs per ton of recent NO_X control actions. The EPA systematically developed a list of cost information from recent actions and proposed actions. The Agency sought cost information for actions taken by EPA, and examined the comments submitted after the NPR was published, to identify all available control cost information to provide the updated reference list for today's preamble. The updated reference list includes both average and marginal costs of control to which EPA compares the CAIR control costs, although the Agency has limited information on marginal costs of other programs.

The EPA's updated summary of average costs of annual NO_X controls are shown in Table IV–6. The results of this reexamination show that costs of recent actions are generally very similar to those identified in the NO_X SIP Call. The cost figures are presented in 1999 dollars.[64]

TABLE IV–6.—AVERAGE COSTS PER TON OF ANNUAL NO_X CONTROLS

NO_X control action	Average cost per ton
Marine Compression Ignition Engines	Up to $200 [2]
Off-highway Diesel Engine	$400–$700 [2]
Nonroad Diesel Engines and Fuel	$600 [1]
Marine Spark Ignition Engines	$1,200–$1.800 [2]
Tier 2 Vehicle Gasoline Sulfur	$1,300–$2,300 [2]
Revision of New Source Performance Standards for NO_X Emissions-EGUs	$1,700 [3]
2007 Highway Heavy Duty Diesel Standards	$1,600–$2,100 [2]
National Low Emission Vehicle	$1,900 [2]
Tier 1 Vehicle Standards	$2,100–$2,800 [2]
Revision of New Source Performance Standards for NO_X Emissions-Industrial Units	$2,200 [3]
On-board Diagnostics	$2,300 [2]
Texas NO_X Emission Reduction Grants FY 2002–2003	$300–$12,700 [4]
Best Available Retrofit Technology (BART) for Electric Power Sector	$800 [5]

[1] Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel; Final Rule (69 FR 39131; June 29, 2004). The value in this table represents the long-term cost per ton of emissions reduced from the total fuel and engine program (cost per ton of emissions reduced in the year 2030). This value includes the cost for NO_X plus NMHC reductions. 1999$ per ton.

[2] Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Final Rule (66 FR 5102; January 18, 2001). The values shown for 2007 Highway HD Diesel Stds are discounted costs. Costs shown in this table include a VOC component. 1999$ per ton.

[64] The updated reference list includes estimated average NO_X control costs under BART. The BART rule has been proposed but not finalized (69 FR 25184; May 5, 2004).

[3] Proposed Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Proposed Revision to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units; Proposed Rule (62 FR 36953; July 9, 1997), Table 4 (the Agency's estimate of average control costs was unchanged for the NSPS revisions final rule, published September 5, 1998). In the CAIR NPR, we included a value from the range of NO_X controls for coal-fired EGUs from Table 2 in the proposed NSPS proposed rule (62 FR 36951). 1999$ per ton.

[4] Costs shown in this table are the range of project costs reported for projects that were FY 2002–2003 recipients of the TERP Emission Reductions Incentive Grants Program. These costs may not be in 1999 dollars. *(www.tnrcc.state.tx.us/oprd/sips/grants.html)*

[5] The EPA IPM modeling 2004 of the proposed BART for the electric power sector (69 FR 25184, May 5, 2004), available in the docket. The EPA modeled the Regional Haze Requirements as a source specific 0.2 lb/mmBtu NO_X emission rate limit. Estimated average costs based on this modeling are $800 per ton in 2015 and 2020. 1999$ per ton.

Table IV–7 presents modeled marginal costs for recent State annual NO_X rules.

TABLE IV–7.—MARGINAL COSTS PER TON OF REDUCTION, RECENT ANNUAL NO_X RULES

NOX control action	Marginal cost per ton
Texas Rules	$2,000–$19,600 [1]

[1] The EPA IPM base case modeling August 2004, available in the docket. 1999$ per ton. We modeled Senate Bill 7 and Ch. 117, which impose varying NO_X control requirements in different areas of the State; the range of marginal costs shown here reflects the range of requirements.

The EPA does not believe that it has sufficient information, for today's rulemaking, to treat controls on source categories other than certain EGUs as providing highly cost-effective emissions reductions. The CAA Section 110 permits States to choose the sources and source categories that will be controlled in order to meet applicable emission and air quality requirements. This means that some States may choose to meet their CAIR obligations by imposing control requirements on sources other than EGUs.

As examples of cost-effective actions that States can take in efforts to provide for attainment with the air quality standards, Table IV–8 presents estimated average costs for potential local mobile source NO_X control actions. The EPA received these cost data during the public comments on the NPR.

TABLE IV–8.—AVERAGE COSTS OF POTENTIAL LOCAL MOBILE SOURCE CONTROL ACTIONS TO REDUCE NO_X EMISSIONS

[$ per Ton] [1]

Source category	Average cost per ton
MWCOG Analysis: Mobile Source, Bicycle racks in DC	$9,000
MWCOG Analysis: Mobile Source, Telecommuting Centers	7,300
MWCOG Analysis: Mobile Source, Government Action Days (ozone action days)	5,000
MWCOG Analysis: Mobile Source, Permit Right Turn on Red	1,200
MWCOG Analysis: Mobile Source, Employer Outreach	3,500
MWCOG Analysis: Mobile Source, Mass Marketing Campaign	2,900
MWCOG Analysis: Mobile Source, Transit Prioritization	8,500

[1] Washington DC Metro Area MWCOG Analysis of Potential Reasonably Available Control Measures (RACM). Projects determined to be "Possible" by MWCOG but not RACM because benefits from the possible control measures do not meet the 8.8 tpd NO_X or 34.0 tpd VOC threshold necessary for RACM. These costs may not be in 1999 dollars. (www.mwcog.org/uploads/committee-documents/z1ZZXg20040217144350.pdf) Comments submitted to the EPA CAIR docket from the Clean Air Task Force *et al.*, dated March 30, 2004, included costs from the MWCOG analysis.

(II) Cost Effectiveness of CAIR Annual NO_X Reductions

Table IV–9 provides the average and marginal costs of annual NO_X reductions under CAIR for 2009 and 2015. These costs are updated from the NPR figures—the EPA analyzed the costs of the CAIR using an updated version of IPM (documentation for the IPM update is in the docket). Further, EPA modified the modeling to match the final CAIR strategy (see section IV.A.1 for a description of EPA's CAIR IPM modeling).

CAIR provides for a Compliance Supplement Pool (CSP) of NO_X allowances that can be used for compliance with the annual NO_X reduction requirements. The CSP is discussed in detail later in this preamble. The EPA used IPM to model marginal costs of CAIR with the CSP. The magnitude of the NO_X CSP is relatively small compared to the annual NO_X budget,[65] thus the CSP does not significantly impact the marginal costs (see Table IV–9).

[65] The CSP consists of 200,000 tons, which is apportioned to each of the 23 States and the District of Columbia that are required by CAIR to make annual NO_X reductions, as well as the 2 States (Delaware and New Jersey) for which EPA is proposing to require annual NO_X reductions.

As with SO_2 marginal costs, EPA considered the sensitivity of the NO_X marginal cost results to assumptions of higher electric growth and future natural gas prices than the Agency used in the base case, as shown in Table IV–9.

TABLE IV–9.—ESTIMATED COSTS PER TON OF ANNUAL NO_X CONTROLLED UNDER CAIR [1]

Type of cost effectiveness	2009	2015
Average Cost—Main Case	$500	$700
Marginal Cost—Main Case	1,300	1,600

TABLE IV–9.—ESTIMATED COSTS PER TON OF ANNUAL NO_X CONTROLLED UNDER CAIR [1]—Continued

Type of cost effectiveness	2009	2015
Marginal Cost—With Compliance Supplement Pool (CSP)	1,300	1,600
Sensitivity Analysis: Marginal Cost Using Alternate Electricity Growth and Natural Gas Price Assumptions	1,400	1,700

[1] The EPA IPM modeling 2004, available in the docket. 1999$ per ton.

These estimated NO_X control costs under CAIR reflect annual EGU NO_X caps of 1.5 million tons in 2009 and 1.3 million tons in 2015 within the CAIR annual NO_X control region (the 23 States and DC that must make annual reductions). In both the main IPM modeling case and the modeling case that includes the CSP, projected annual NO_X emissions in the CAIR region will be about 1.5 million tons in 2009 and 1.3 million tons in 2015. The projected emissions are very similar in both modeling cases because the CSP is relatively small compared to the annual NO_X budget.

Average costs shown for 2015 are based on the amount of reductions that would achieve the total difference in projected emissions between the base case conditions and CAIR in the year 2015. These costs are not based on the increment in reductions between 2009 and 2015. (A more detailed description of the final CAIR SO_2 and NO_X control requirements is provided later in today's preamble.)

Most of the States subject to today's $PM_{2.5}$ control requirements have been subject to the NO_X SIP Call requirements. Some sources in these States have installed SCRs, and run them during the ozone season. These sources might comply with the $PM_{2.5}$ annual NO_X requirements by, at least in part, running the SCR controls for the remaining months of the year. Under these circumstances, the compliance costs for the $PM_{2.5}$ SIP requirements are lower.

Table IV–10 provides estimated costs per ton of NO_X for non-ozone season reductions under CAIR. These figures are updated from the NPR calculations—the EPA analyzed the costs of the CAIR using an updated version of IPM (documentation for the IPM update is in the docket) and modeled controls on a region that more closely matches the region affected by CAIR.

TABLE IV–10.—PREDICTED COSTS PER TON OF NON-OZONE SEASON NO_X CONTROLLED UNDER CAIR [1]

Type of cost effectiveness	2009	2015
Average Cost	$500	$500

[1] The EPA IPM modeling 2004, available in the docket. 1999$ per ton.

The estimated non-ozone season NO_X costs, like the annual NO_X costs, are on the low end of the cost effectiveness range described in Table IV–6. The EPA considers the 2015 and also the 2009 costs to represent highly cost-effective controls.

Environmental Defense reached similar conclusions regarding the cost effectiveness of non-ozone season NO_X reductions, as described in their report "A Plan for All Seasons: Costs and Benefits of Year-Round NO_X Reductions in Eastern States (2002)." As stated in that report, "[As Figure 4 shows,] extending NO_X reductions throughout the year results in dramatic decreases in the per-ton costs of NO_X emission reductions for the 19 NO_X SIP Call States. This is because the bulk of the cost for reducing NO_X emissions from power plants lies in the capital investment in the control equipment. Once the primary investment has been made, it costs relatively little to continue running the control equipment beyond the summer months required by EPA's NO_X SIP Call." Environmental Defense based these conclusions on analysis conducted by Resources for the Future (RFF). In an RFF paper, "Cost-Effective Reduction of NO_X Emissions from Electricity Generation (July 2001)," RFF draws similar conclusions.

(III) NO_X Cost Comparison for CAIR Requirements

The EPA believes that selecting as highly cost-effective amounts at the lower end of these average and marginal cost ranges is appropriate for reasons explained above in this section of the preamble.

As discussed above, although in the NO_X SIP Call the cost level selected was not at the low end of the reference range of costs, if the NO_X SIP Call costs were for annual rather than seasonal controls they would have been lower relative to the other control costs on the reference list which were mostly for annual programs.

For annual NO_X, the range of average cost effectiveness extends broadly, from under $200 to thousands of dollars (Table IV–6). The 2015 estimated average costs for CAIR annual NO_X control of $700 are consistent with the lower end of this range.

Less information is available for the marginal costs of controls than for average costs. Looking at the available marginal costs (Table IV–7), the 2015 CAIR marginal costs for annual NO_X controls are at the lower end of the range. The EPA also evaluated the cost effectiveness of the 2009 cap, and concluded that the 2009 requirements are highly cost-effective.

(IV) Cost Effectiveness: Marginal Cost Curves for Annual NO_X Control

As with SO_2 controls, EPA also considered the cost effectiveness of alternative stringency levels for NO_X control for today's action by examining changes in the marginal cost curve at varying levels of emissions reductions. Figure IV–3 shows that the "knee" in the 2010 marginal cost effectiveness curve for EGUs—the point where the cost of controlling a ton of NO_X begins to increase at a noticeably higher rate—appears to occur at over $1,700 per ton of NO_X. Although EPA conducted this marginal cost curve analysis based on an initial NO_X control phase in 2010, the results would be very similar for 2009, which is the initial NO_X phase in the final CAIR. Figure IV–4 shows that the "knee" in the 2015 marginal cost effectiveness curve for EGUs appears to occur at over $1,700 per ton of NO_X. (The EPA based these marginal NO_X cost effectiveness curves on the electricity growth and natural gas price assumptions in the main CAIR IPM modeling run. Marginal cost effectiveness curves based on other electric growth and natural gas price assumptions would look different, therefore it would not be appropriate to compare the curves here to the marginal costs based on the IPM modeling sensitivity run that used EIA assumptions.) The EPA used the Technology Retrofitting Updating Model (TRUM), a spreadsheet model based on IPM, for this analysis. These results make clear that this rule is very cost-effective because the control level is below the point at which the cost begins to increase at a significantly higher rate.

In this manner, these results corroborate EPA's findings above concerning the cost effectiveness of the emissions reductions.[66]

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Figure IV-3

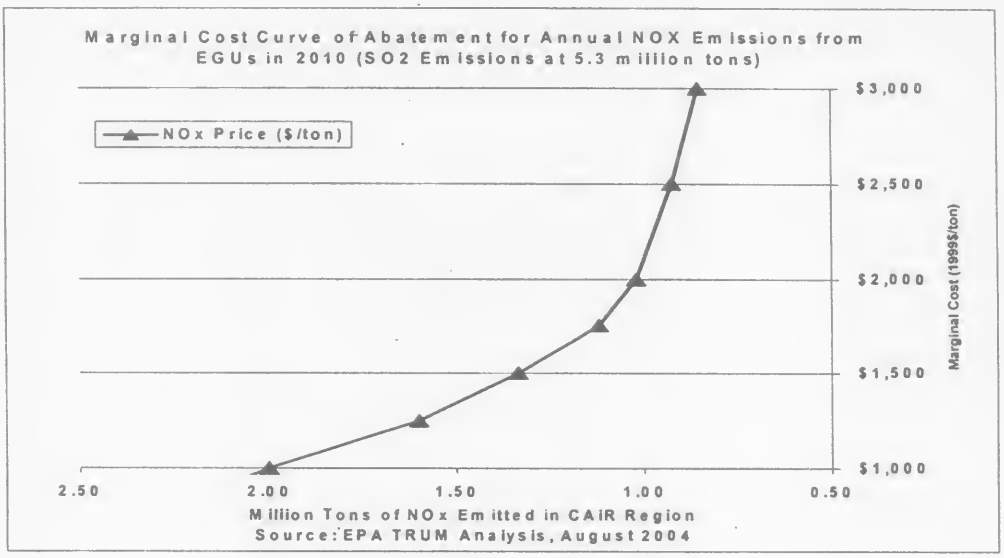
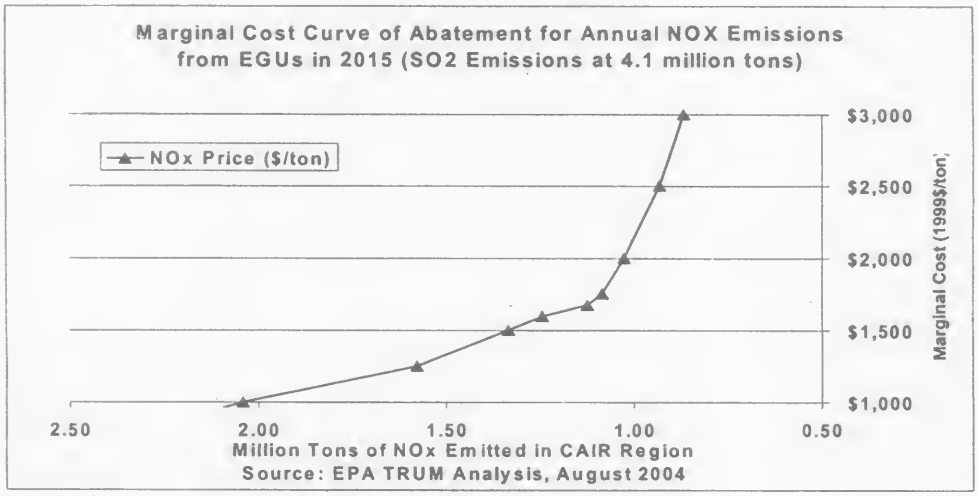


Figure IV-4



[66] EPA is using the knee in the curve analysis solely to show that the required emissions reductions are very cost effective. The marginal cost curve reflects only emissions reduction and cost information, and not other considerations. We note that it might be reasonable in a particular regulatory action to require emissions reductions past the knee of the curve to reduce overall costs of meeting the NAAQS or to achieve benefits that exceed costs. As in the case of SO_2 controls, described above, it should be noted that similar analysis for other source categories may yield different curves.

(V) Cost Effectiveness of Ozone Season NO_X Reductions

The CAIR requires ozone season NO_X emissions reduction for all States determined to contribute significantly to ozone nonattainment downwind (25 States and the District of Columbia). The EPA used IPM to model average and marginal costs of the ozone season reductions assuming EGU controls. In this modeling case, EPA modeled an ozone season NO_X cap for the region affected by CAIR for downwind ozone nonattainment, but did not include the CAIR annual SO_2 or NO_X caps. Based on that modeling, Table IV–11 provides estimated average and marginal costs of regionwide ozone season NO_X reductions for 2009 and 2015. Table IV–11 shows the estimated cost effectiveness of today's ozone season NO_X control requirements for 8-hour transport SIPs.

TABLE IV–11.—ESTIMATED COSTS PER TON OF OZONE SEASON NO_X CONTROLLED UNDER CAIR [1]

Type of cost effectiveness	2009	2015
Average Cost	$900	$1,800
Marginal Cost	2,400	3,000

[1] The EPA IPM modeling 2004, available in the docket. 1999$ per ton.

These estimated NO_X control costs are based on ozone season EGU NO_X caps of 0.6 million tons in 2009 and 0.5 million tons in 2015 within the CAIR ozone season NO_X control region. Average costs shown for 2015 are based on the amount of reductions that would achieve the total difference in projected emissions between the base case conditions and CAIR in the year 2015. These costs are not based on the increment in reductions between 2009 and 2015. (A more detailed description of the final CAIR SO_2 and NO_X control requirements is provided later in today's preamble.)

The EPA believes that selecting as highly cost-effective amounts at the lower end of the average and marginal cost ranges is appropriate for reasons explained above in section IV in this preamble.

In the NO_X SIP Call, EPA identified average costs of $2,500 (1999$) (or $2,000 (1990$)) as highly cost-effective.[67] The estimated average costs of regionwide ozone season NO_X control under CAIR are $1,800 per ton in 2015 and $900 per ton in 2009. Thus, with respect to average costs the controls for the final phase (2015) cap, which are below the $2,500 identified in the NO_X SIP Call, are also highly cost-effective, as are those for the 2009 cap. In addition, the estimated average costs of CAIR ozone season NO_X control are at the lower end of the reference range of average annual NO_X control costs (the reference list of average annual NO_X control costs is presented above).

Similarly, the estimated marginal costs[68] of ozone season CAIR NO_X controls are within EPA's reference range of marginal costs, at the lower end of the range (the reference list of marginal annual NO_X control costs is presented above). We note that the marginal costs in the reference range are for annual NO_X reductions, and would likely be higher for ozone season only programs. Considering both average and marginal costs, the CAIR ozone season control level is highly cost-effective.

For purposes of estimating costs of ozone season control under CAIR, EPA set up this modeling case with CAIR ozone season NO_X requirements but without the annual NO_X requirements. The Agency believes that the cost of the ozone season CAIR requirements will actually be lower than the costs presented here because interactions will occur between the CAIR annual and ozone season NO_X control requirements.[69] In addition, for States in both programs, the same controls achieving annual reductions for PM purposes will achieve ozone season reductions for ozone purposes; this is not reflected in our cost-per-ton estimates.

As with SO_2 controls, and annual NO_X controls, EPA also considered the cost effectiveness of alternative stringency levels for CAIR NO_X reductions for ozone purposes by examining changes in the marginal cost curve at varying levels of emissions reductions. Figure IV–5 shows that the "knee" in the 2010 marginal cost effectiveness curve for ozone season NO_X reductions from EGUs—the point where the cost of controlling an ozone season ton of NO_X begins to increase at a noticeably higher rate—appears to occur somewhere between $3,000 and $4,000 per ton of NO_X. Although EPA conducted this marginal cost curve analysis based on an initial NO_X control phase in 2010 the results would be very similar for 2009, which is the initial NO_X phase in the final CAIR. Figure IV–6 shows that the "knee" in the 2015 marginal cost effectiveness curve for ozone season NO_X reductions from EGUs appears to occur somewhere between $3,000 and $4,000 per ton of NO_X. The EPA used the Technology Retrofitting Updating Model (TRUM), a spreadsheet model based on the IPM, for this analysis. These results make clear that CAIR NO_X reductions for ozone purposes are very cost-effective because the control level is below the point at which the cost begins to increase at a significantly higher rate.

In this manner, these results corroborate EPA's findings above concerning the cost effectiveness of the emissions reductions.[70]

[67] For both the NO_X SIP Call and CAIR, the NO_X control costs on the reference lists are generally for annual reductions. The EPA compared the costs of ozone season reductions under the NO_X SIP Call, as well as ozone season CAIR NO_X reductions, to the annual reduction programs on the reference lists.

[68] In the NO_X SIP Call EPA used average, not marginal, costs to evaluate cost effectiveness. For the reasons discussed above we are evaluating both average and marginal costs for CAIR.

[69] Estimated costs for regionwide CAIR NO_X controls during the ozone season are higher than the average and marginal costs for CAIR annual NO_X controls. This is because, as noted above, the capital costs of installing NO_X control equipment would be largely identical whether the SCR will be operated during the ozone season only or for the entire year. However, the amount of reductions would be less if the control equipment were operated only during the ozone season compared to annual operation.

[70] EPA is using the knee in the curve analysis solely to show that the required emissions reductions are very cost effective. The marginal cost curve reflects only emissions reduction and cost information, and not other considerations. We note that it might be reasonable in a particular regulatory action to require emissions reductions past the knee of the curve to reduce overall costs of meeting the NAAQS or to achieve benefits that exceed costs. As in the case of SO_2 controls, described above, it should be noted that similar analysis for other source categories may yield different curves.

Figure IV-5

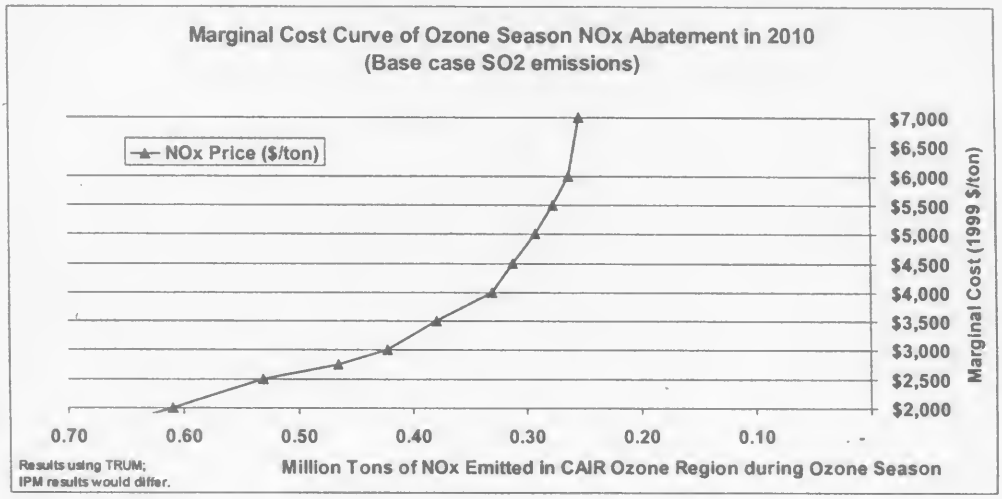
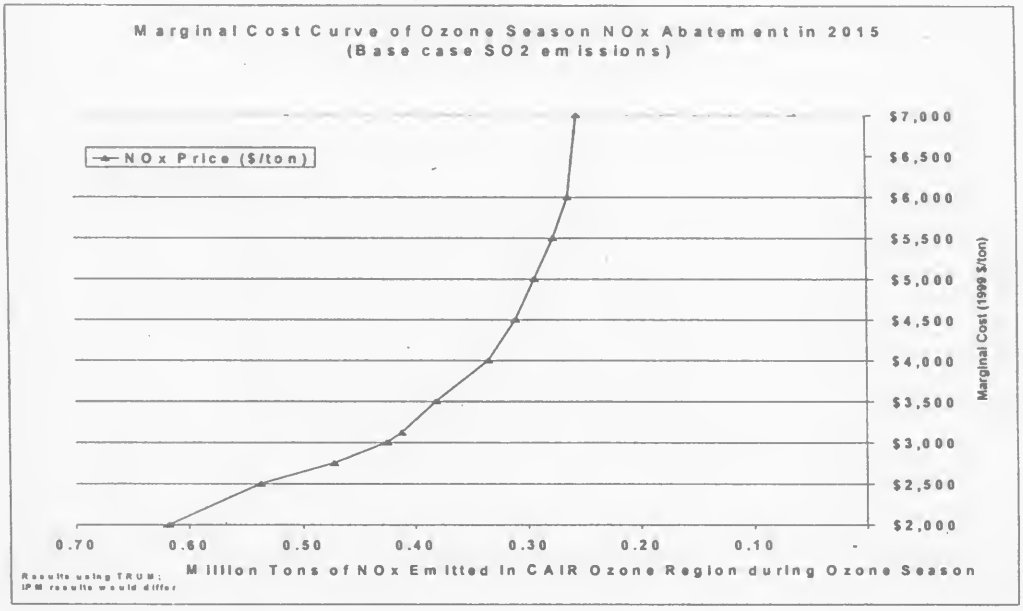


Figure IV-6



B. What Other Sources Did EPA Consider When Determining Emission Reduction Requirements?

1. Potential Sources of Highly Cost-Effective Emissions Reductions

In today's rulemaking, EPA determines the amount of regionwide emissions reductions required by determining the amount of emissions reductions that could be achieved through the application of highly cost-effective controls on certain EGUs. The EPA has reviewed other source categories, but concludes that for purposes of today's rulemaking, there is insufficient information to conclude that highly cost-effective controls are available for other source categories.

a. Mobile and Area Sources

In the NPR (69 FR 4610), EPA explained that "it did not identify highly cost-effective controls on mobile or area sources." No comments were received suggesting that mobile or area sources should be controlled. Therefore, in developing emission reduction requirements, EPA is not assuming any emissions reductions from mobile or area sources.

b. Non-EGU Boilers and Turbines

The largest single category of stationary source non-EGUs are large non-EGU boilers and turbines. This

source category emits both SO_2 and NO_X. In the CAIR NPR, EPA proposed not to include any potential SO_2 or NO_X emissions reductions from non-EGU boilers and turbines as constituting "highly cost-effective" reductions and thus to be taken into account in establishing emissions requirements because EPA believed it had insufficient information on their control costs, particularly costs associated with the integration of NO_X and SO_2 controls. In addition, based on information EPA does have, projected base case (without the CAIR) emissions of SO_2 and NO_X from these sources are significantly lower than projected EGU emissions. The EPA projects that in 2010 under base case conditions, EGUs would contribute 70 percent of SO_2 in the CAIR region compared to 15 percent from non-EGU boilers and turbines in the CAIR region. The Agency also predicts that in 2010 under the base case, EGUs would contribute 25 percent of NO_X emissions in the CAIR region compared to 16 percent from non-EGU boilers and turbines in the CAIR region. Thus, simply on an absolute basis, non-EGU emissions are relatively less significant than emissions from EGUs. The EPA is finalizing its proposed approach to these sources and has not based today's requirements on any presumed availability of highly cost-effective emissions reductions from non-EGU boilers and turbines.

A number of commenters believe EPA should determine that emissions reductions from non-EGUs should be taken into account in establishing emission requirements because, they believe, highly cost-effective controls are available for these sources. These commenters argued that highly cost-effective controls are available for these sources and that EPA should have sufficient emissions and control cost information because the same sources were included in the NO_X SIP Call.

In addition, while it is true that these sources were included in the NO_X SIP Call, EPA only addressed NO_X reductions from these sources. Neither SO_2 reductions nor monitoring of SO_2 emissions is required by the NO_X SIP Call. As a result, for these sources, EPA has less reliable SO_2 emissions data and very little information on the integration of NO_X and SO_2 controls. Although EPA has more information on NO_X emissions from these sources because of the NO_X SIP Call (and other programs in the northeastern U.S.), the geographic coverage of the CAIR includes some States that were not included in the NO_X SIP Call, some of which States contain significant amounts of industry. The EPA has even less emissions data from non-EGUs in these non-SIP call States affected by the CAIR. While EPA has incorporated State-submitted emissions inventory data for 1999 into its analysis for the CAIR, even this data is generally lacking information on fuel, sulfur content, and existing controls. Without this data, it is very difficult to assess the emission reduction opportunities available for non-EGU boilers and turbines. Furthermore, with regards to NO_X, many non-EGU boilers and turbines are making reductions using low NO_X burners (the control technology EPA assumed in making the cost-effectiveness determinations in the NO_X SIP Call). Since these controls are operated year-round, annual emissions reductions are already being obtained from many of these units. Additional reductions would likely be less cost effective.

Another commenter stated that non-EGU "major sources" are subject to the requirements of title V of the CAA and, therefore, EPA should have adequate emissions data provided as part of the sources' permitting obligations. However, title V simply requires that a source's permit include the substantive requirements (such as emission monitoring requirements) imposed by other sections of the CAA and does not itself impose any substantive requirements. Thus, the mere fact that a source is a major source required to have a title V permit does not mean that the source is monitoring and submitting emissions, fuel, and control device data. Many such sources do not, in fact, provide such data.

One commenter submitted cost information for FGD technology applications on industrial boilers. However, the information submitted by the commenter was based on the use of a limited number of technologies and for a limited number of boiler sizes. The EPA does not believe that the limited information demonstrates that SO_2 emissions from these sources could be controlled in a highly cost-effective manner across the entire sector in question, or to what level the emissions could be controlled.

Some commenters recommended including non-EGU boilers and turbines because in the future, after reductions from EGUs are made, the relative contribution of non-EGU boilers and turbines to the total NO_X and SO_2 emissions will increase. The EPA agrees that the relative contribution of non-EGUs to total NO_X and SO_2 emissions will increase in the future if States choose to meet their CAIR emissions reduction obligations solely by way of emission reductions made by EGUs. However, EPA does not believe that this, by itself, provides any basis for determining that in the context of this rule emissions reductions from non-EGUs should be determined to be highly cost-effective. As discussed above, EPA believes it is necessary to have more reliable emissions data and better control cost information for these sources before assuming reductions from them in the CAIR. The EPA is working to improve its inventory of emissions and control cost information for non-EGU boilers and turbines. Specifically, we are assessing the emission inventory submittals for 2002 made by States in response to the relatively new requirements of 40 CFR part 51 (the Consolidated Emission Reporting Rule), and we will work with States whose submissions appear to have gaps in required data. We also note that EPA provides financial and technical support for the efforts of the five Regional Planning Organizations to coordinate among and assist States in improving emission inventories.

Another commenter expressed concern that if the decision whether to control large industrial boilers is left to the States, the result may be inequitable treatment of EGUs on a State-by-State basis, particularly with respect to allowances, and therefore it would make sense to require NO_X and SO_2 reductions from large industrial boilers. Section 110 of the CAA leaves the ultimate choice of what sources to control to the States, and EPA cannot require States to control non-EGUs. Even if EPA had included reductions from non-EGUs in determining the total amount of reductions required under the CAIR, EPA could not have required any State to achieve those reductions through emission limitations on non-EGUs.

The recent economic circumstances faced by the manufacturing sector accentuates EPA's concerns about the lack of reliable emissions data and control information regarding non-EGUs. We note that the U.S. manufacturing sector was adversely affected by the latest business cycle slowdown. As noted in the 2004 Economic Report of the President, the manufacturing sector was hit earlier, longer, and harder than other sectors of the economy. The 2004 Report also points out that, although manufacturing output has dropped much more than the real gross domestic product (GDP) during past business cycles, the latest recovery has been unusual because it has been weaker for the manufacturing sector than the recovery in the real GDP. The disparity across sectors (and even within individual sectors) in the economic condition of firms reinforces

EPA's concerns about moving forward to consider emission controls on non-EGUs at this time.

As explained elsewhere in this preamble, although the CAIR does not require that States achieve the required emissions reductions by controlling particular source categories, we expect that States will meet their CAIR obligations by requiring emissions reductions from EGUs because such reductions are highly cost effective. We believe the States are in the best position to make decisions regarding any additional control requirements for non-EGU sources. In making such decisions, States may take into consideration all relevant factors and information, such as differences across States in the need for control, differences in relative contribution of various sources, and differences in the operating and economic conditions across sources.

c. Other Non-EGU Stationary Sources

In the NPR and in the technical support document entitled "Identification and Discussion of Sources of Regional Point Source NO_X and SO_2 Emissions Other Than EGUs (January 2004)," EPA applied a similar rationale for non-EGU stationary sources other than boilers and turbines. For SO_2, EPA noted that the emissions from such sources were a relatively small part of the emissions inventory, and we also noted the lack of information on costs. For NO_X, we explained that more information was available than for SO_2. This is because the NO_X SIP Call included consideration of emissions control measures for internal combustion (IC) engines and cement kilns, and developed cost estimates for other NO_X-emitting categories such as process heaters and glass manufacturing. However, we believed—as for boilers and turbines, discussed above—that insufficient information on emission control options and costs, was available to apply these measures to the entire geographic area covered by the proposed rule.

No adverse comments were received suggesting inclusion of SO_2 emissions reductions from non-EGU stationary sources other than boilers and turbines. Accordingly, EPA has determined not to consider SO_2 reductions from these other non-EGU stationary sources.

Several commenters suggested that EPA should have been able to consider NO_X emissions reductions from non-EGU categories other than boilers and turbines, such as internal combustion (IC) engines and refinery fluid catalytic cracking units. These commenters believed such reductions were demonstrated to be cost effective, and questioned EPA's assertion that insufficient information is available. Finally, some commenters believe EPA should have, at a minimum, required that controls for NO_X SIP Call sources—including large IC engines and cement kilns—should be extended from the ozone season to the entire year.

We believe it likely that inclusion in today's requirements of reductions from any highly cost-effective controls—if available—for these categories would have very small effects. First, most of the States included in the CAIR rule were also included in the NO_X SIP Call, so that many of the emissions reductions that would be available from these sources have already occurred due to implementation of the NO_X SIP Call. Second, in the States included in the CAIR rule, but which were not covered by the NO_X SIP Call, only a small portion of NO_X emissions come from cement kilns and IC engines compared to EGUs. Moreover, in some parts of this geographic area, in particular for Texas, many sources in these source categories are already regulated under ozone nonattainment plans (including SIPs for the Texas cities of Houston, Galveston, and Dallas).

Regarding the commenters' recommendation that extending NO_X SIP Call control requirements to a year-round basis for large IC engines and cement kilns should be considered to be highly cost effective, EPA believes that few emissions reductions would be achieved from doing so. The types of controls that were applied in the NO_X SIP Call States, while required to be in place only during the ozone season, will, as a practical matter, be applied on a year-round basis, whether or not so required by today's rule. Most, if not all, of the NO_X SIP Call States have developed regulations to control NO_X emissions from IC engines and cement kilns during the ozone season. The control of choice to meet these reductions from large lean burn IC engines is low emission combustion (LEC), which for retrofit applications is a substantial equipment modification of the engine's combustion system. The engine will operate with LEC year round because this modification is a permanent change to the engine. Most, if not all, new large lean-burn IC engines have LEC. In addition, year-round emissions controls are already required for rich-burn engines greater than 500 hp which will likely install nonselective catalyst reduction to comply with the recently adopted hazardous air pollutant standards (see final rule for reciprocating IC engines, 69 FR 33474, June 15, 2004). For cement kilns, the controls of choice are low NO_X burners and mid-kiln firing. Low NO_X burners (LNB) are a permanent part of the kiln, so that the kiln will operate year-round with LNB. Mid-kiln firing is a kiln modification for which a solid and slow burning fuel (typically tires) is injected in the mid-kiln area. Due to tipping fees and fuel credits, mid-kiln firing results in an operating cost savings. After this system is installed, year-round operation is expected.

C. Schedule for Implementing SO_2 and NO_X Emissions Reduction Requirements for $PM_{2.5}$ and Ozone

1. Overview

In the NPR, EPA proposed a two-phased schedule for implementing the CAIR annual emission reduction requirements: implementation of the first phase would be required by January 1, 2010 (covering 2010–2014), and that for the second phase by January 1, 2015 (covering after 2014). The EPA based its proposal on its analysis of engineering, financial, and other factors that affect the timing for installing the emission controls that would be most cost-effective—and are therefore the most likely to be adopted—for States to meet the CAIR requirements. Those air pollution controls are primarily retrofitted FGD systems (i.e., scrubbers) for SO_2 and SCR systems for NO_X on coal-fired power plants.

The EPA's projections showed a significant number of affected sources installing these controls. The proposed two-phased schedule allowed the implementation of as much of the controls as feasible by an early date, with a later time for the remaining controls.

The EPA received detailed, technical comments from commenters who argued that the controls could not be implemented until later than proposed, and from other commenters who argued that the controls could be implemented sooner than proposed. The EPA has reviewed the comments and has conducted additional research and analyses to verify availability of adequate industrial resources, including boilermakers, for constructing the emission control retrofits required by CAIR. These analyses are based on conservative assumptions, including those suggested by the commenters, to ensure that the requirements imposed by CAIR do not result in shortages of the required resources that could substantially increase construction costs for pollution controls and reduce the cost effectiveness of this program.

Today, EPA is taking final action to require the annual emissions reductions

on the same two-phase schedule as proposed. However, the requirements for the first phase include two separate compliance deadlines: Implementation of NO_X reductions are required by January 1, 2009 (covering 2009–2014) and for SO_2 reductions by January 1, 2010 (covering 2010–2014). The compliance deadline requirements for the second phase are the same as proposed. The EPA believes that its action is consistent with the Agency's obligations under the CAA to require emission reductions for obtaining NAAQS to be achieved as soon as practicable. The EPA applied the same criterion in implementing the NO_X SIP Call, which was based on a single-phased schedule.[71]

2. Engineering Factors Affecting Timing for Control Retrofits

a. NPR

In the NPR, EPA identified the availability of boilermakers as an important constraint for the installation of significant amounts of SCR and FGD retrofits. Boilermakers are skilled laborers that perform various specialized construction activities, including welding and rigging, for boilers and high pressure vessels. The air pollution control devices, such as scrubber and SCR vessels, require boilermakers for their construction. Apprentices with no prior work-related experience complete a four-year training program, to become full boilermakers. For apprentices with relevant experience, this training period could be shorter. For example, union members representing the shipbuilding trade could be expedited into the boilermaker division within a year.

The boilermaker constraint was considered more important for the initiation of the first phase of CAIR, since the NO_X SIP Call experience had shown that many sources would be adverse to committing significant funds to install controls until after SIPs were finalized. With the States required to finalize SIPs in 18 months after the signing of the final rule, the sources would have three years in which to complete purchasing, construction, and startup activities associated with these controls, to meet the proposed CAIR deadline.

The EPA's projections showed power plants installing 51.4 gigawatts (GW) of FGD and 28.2 GW of SCR retrofits during the first CAIR phase. These projections include retrofits for CAIR as well as retrofits for base case policies (i.e., retrofits for existing regulatory requirements). We estimated the total boilermaker-years required for installing these controls at 12,700, which was based on the boilermakers being utilized over a period of 18 months during the installation process. Also, based on the projected boilermaker population in the timeframe relevant to the installation of these controls, we estimated that 14,700 boilermaker-years were available over the same 18-month period. The availability of approximately 15 percent more boilermaker-years than required, as shown by these estimates, confirms the adequacy of this critical resource for CAIR and EPA assumed this to be a reasonable contingency factor.

The EPA also determined that installation of the projected amounts of FGD and SCR retrofits could be completed within the three-year period available for CAIR. This determination was based on a previous report prepared by EPA for the proposed Clear Skies Act, "Engineering and Economic Factors Affecting the Installation of Control Technologies for Multi-Pollutant Strategies," (docket no. OAR–2003–0053–0106). According to this report, an average of 21 months are required to install SCR on one unit, and 27 months to install a scrubber on one unit. For multiple units within the same plant, installation of controls would normally be staggered to avoid operational disruptions. The EPA projected that the maximum number of multiple-unit controls required for each affected facility could all be installed within three years.The NPR proposal included a second phase, with a compliance deadline of January 1, 2015. The EPA's projections showed power plants installing 19.1 GW of FGD and 31.7 GW of SCR retrofits by 2015, which included retrofits for CAIR as well as retrofits for base case policies (i.e., retrofits for existing regulatory requirements). Availability of boilermaker labor was not an important constraint for this phase.

b. Comments

The EPA received several comments relating to the requirements for the two-phased implementation program, the emission caps and compliance deadline for each phase, and resources required to install necessary controls. The commenters offered opposing viewpoints, which can be broadly categorized as follows.

Several commenters indicated that the compliance deadline of 2010 for the first phase was not attainable and argued that EPA should either extend the deadline, or set higher emission caps for this phase. The commenters raised the following specific points in support of their concerns:

- The time allowed for completing various activities from planning to startup of the required controls was not sufficient. Other related activities, including project financing and obtaining a landfill permit for the scrubber waste, could also require more time than what the rule allowed. In addition, the short implementation period would require simultaneous outages of too many units to tie the new equipment into the existing systems, which would affect the reliability of the electrical grid.
- Implementation of controls to the required large number of units would cause shortages in the supply of critical industrial resources, especially boilermakers. An analysis performed by a commenter showed a shortfall in the supply of boilermaker labor during the construction period relevant to CAIR retrofits. This commenter anticipated that certain key variables would be greater in value than those used by EPA and based their analysis on higher SCR prices, EIA-projected higher natural gas prices and electricity demand factors, and more stringent boilermaker duty rates (boilermaker-year/MW) and availability factors.

Commenters who favored more stringent compliance deadlines argued that the required controls could be installed in less time and more controls could be built in early years. These commenters raised the following specific points in support of their concerns.

- The compliance deadlines for the two phases did not support the ozone and fine particulate ($PM_{2.5}$) attainment dates mandated by the CAA. The Phase I deadline should be accelerated to meet these attainment dates. Sufficient industrial resources, including boilermakers, would be available to support such an acceleration. While some commenters supported an earlier Phase I deadline of January 1, 2008, the others supported a deadline of January 1, 2009. Some of these commenters also suggested that the Phase I deadline be accelerated only for NO_X.
- The EPA's estimates for the boilermaker availability were too conservative. A boilermaker labor analysis performed by one commenter showed an adequate supply of this resource to support installation of all Phase I and II controls by the start of the first phase (by 2010), thereby eliminating the need for two phases.
- The time allowed for installing controls for Phase II was excessive. The initiation of this phase could be moved forward.

[71] The NO_X SIP Call Rule allowed approximately 3½ years for implementation of all NO_X Controls.

Several commenters supported EPA's assumptions used in support of the adequacy of the implementation period and resources to build the required CAIR controls. These assumptions included the overall construction schedule durations for SCR and FGD systems and boilermaker unit rates.

c. Responses

The EPA reviewed the above comments and performed additional research and analyses, including new IPM runs that incorporated higher SCR and natural gas costs and greater electric demand. We also found that more units had installed SCR under the NO_X SIP Call and other regulatory actions than what our records previously showed. This increase in the number of existing SCR installations was also incorporated into these IPM runs. In addition, the number of existing FGD installations was also revised slightly downward, for the same reason.

The revised IPM analyses for today's final action show that the amounts of controls that need to be put on for Phase I are 39.6 GW of FGD and 23.9 GW of SCR. These amounts represent a reduction from the estimates for the NPR. For Phase II, the amount of the required controls are 32.4 GW of FGD and 26.6 GW of SCR. These amounts represent an increase from the estimates for the NPR. The amounts shown for both phases reflect all retrofits required for the CAIR and base case (non-CAIR) policies. The retrofit projections for the base case policies are included, since some of the available boilermaker labor would be consumed in building these retrofits during the CAIR time-frame.

The EPA also contacted the International Brotherhood of Boilermakers (IBB), U.S. Bureau of Labor Statistics (BLS), and National Association of Construction Boilermaker Employers (NACBE) to verify its assumptions on boilermakers population, percentage of boilermakers available to work on the control retrofit projects, and average annual hours of boilermaker employment. Except for the boilermaker population, the information received as a result of these investigations validated EPA's assumptions. IBB also confirmed that the boilermaker population would at least be maintained at the current level of 26,000 members, during the period relevant to construction of CAIR retrofits. It did not want to forecast growth and historically has not done so. Therefore, instead of the 28,000 boilermaker forecasted population used in the NPR, we have conservatively used a boilermaker population of 26,000 for the final CAIR. A detailed discussion on these assumptions and the information received from these sources is available in the docket to this rulemaking as a technical support document (TSD), entitled "Boilermaker Labor and Installation Timing Analysis, (docket no. OAR–2003–0053–2092)."

The responses to the most significant comments on these issues are summarized in the following sections.

i. Issues Related to Compliance Deadline Extension

(I) Adequacy of Phase I Implementation Period

Today's action initiates State activities in conjunction with EPA to set up the administrative details of CAIR. With the first phase compliance deadline of January 1, 2009, for NO_X and January 1, 2010, for SO_2, the affected sources would have approximately 3¾ and 4¾ years for the implementation of the overall requirements for this phase, respectively. The final SIPs would be submitted at the end of the first 18 months of these implementation periods. The remaining 2¼ and 3¼ years would be available for the sources to complete activities required for the procurement and installation of NO_X and SO_2 controls, respectively. For the reasons outlined below, EPA believes that these deadlines provide enough time to install the required Phase I controls.

(A) Engineering/Construction Schedule Issues

The EPA notes that, for CAIR, the States would finalize the SIPs in 18 months after the rule is signed, and that until then, the majority of sources required to install controls may not initiate activities that require commitment of major funds. However, some activities, such as planning, preparation of conceptual designs, selection of technologies, and contacts with equipment suppliers can be started or completed prior to the finalization of SIPs, at least for major sources expected to require longer implementation periods. In addition, other activities, such as permitting and financing can be started after the rule is finalized. This is based on the NO_X SIP Call experience.

After the SIPs are finalized, the sources would have approximately 2¼ and 3¼ years in which to complete purchasing, detailed design, fabrication, construction, and startup of the required NO_X and SO_2 controls, respectively. This assumes that activities, such as planning and selection of technologies, have already been started or completed, prior to the start of these 2¼- and 3¼-year periods. As discussed in the NPR proposal, EPA projects an average single-unit installation time of 21 months for SCR and 27 months for a scrubber. Our revised IPM analysis for the final rule shows that many facilities would install controls on multiple units (a maximum of six for SCR and five for FGD) at the same plant. We expect these facilities to stagger these installations to minimize operational disruptions.

The EPA also projects that SCRs and scrubbers could be installed on the multiple units in the available time periods of 2¼ and 3¼ years, respectively. The issues related to the availability of boilermakers and the ability of the plants requiring multiple-unit controls to stagger their installations during these periods are discussed later in this preamble.

As compared to projections in the NPR proposal, earlier signing of the final rule adds approximately three additional months to the overall implementation periods for SO_2 controls. Furthermore, EPA's projections for the final rule show fewer Phase I NO_X and SO_2 controls being added than the projections in the NPR proposal. Since the compliance deadline for NO_X has been moved up a year from the proposal, a three-month earlier rule promulgation provides more time for implementing SO_2 controls only. However, since it does allow use of critical resources, such as boilermakers, for SO_2 controls to be spread over a longer period of time, the net effect would be to make more of these resources available for both SO_2 and NO_X controls (as compared to a scenario where promulgation was not three months earlier). This is especially true since the implementation periods for both NO_X and SO_2 controls would start at the same time and the plants installing these controls would be competing for the same resources until January 1, 2009, the compliance deadline for NO_X. The EPA, therefore, believes that 2¼- and 3¼-year time periods provide reasonable amounts of time from the approval of State programs by September 2006, until the commencement of compliance deadlines for meeting the NO_X and SO_2 emission requirements.

Certain commenters have provided their own estimates of schedule requirements for installing the required controls. In some cases, these estimates are longer than those determined by EPA. For scrubbers, including spray dryer and wet limestone or lime type systems, the control implementation requirements provided by the commenters range from 30 to 54 months for the overall project and 18 to 36 months for the phase following

equipment awards. In this case, the lowest 18-month schedule requirement cited applies to spray dryers, whereas the shortest schedule cited for wet scrubbers for the activities following the equipment awards is 24 months. For SCR, the control implementation requirements cited by the commenters range from 24 to 36 months for the overall project and 17 to 25 months for the phase following the equipment awards.

One commenter has pointed out that the construction schedule requirements for the FGD and SCR retrofit projects have shortened, because of the lessons learned from a significant number of such projects completed during the last few years. The EPA notes that a recent announcement for a new 485 MW limestone scrubber facility indicates a construction schedule duration (from equipment award to startup) of only 18 months.[72] This is well below the schedule requirement cited by the commenters for a wet limestone scrubber.

The EPA also notes that most of the commenters' schedule estimates are consistent with the time periods available for completing the CAIR-related NO_X and SO_2 projects. Some of the longer schedules submitted by commenters would exceed the CAIR Phase I dates. However, EPA considers these longer schedules to be speculative, as these commenters did not justify them. The major factors that influence schedule requirements include size of the installation, degree of retrofit difficulty, and plant location. The EPA does not expect these factors to make a difference of more than a few months between the schedule requirements of various installations. The commenters who have cited long schedule requirements that fall at the higher end of the above ranges have not provided any data to support the wide differences between their schedules and those proposed by others, including EPA. It should also be noted that EPA's schedules are based on information from several actual SCR and scrubber installations. Therefore, EPA cannot accept the excessive schedule requirements proposed by these commenters.

(B) Landfill Permit Issue

The EPA contacted several key States requiring FGD retrofits, to investigate the amount of time required to obtain a landfill permit for scrubber waste. We note that not all scrubber installations would require landfills, as some scrubber designs produce saleable waste products, such as gypsum.

Specifically, EPA contacted Georgia, Ohio, Indiana, Alabama, Pennsylvania, West Virginia, Tennessee, and Kentucky.[73] Except for Kentucky, all States indicated that their permit approval periods ranged from 12 to 27 months. Some of these States indicated that permit approval may require more time than 27 months, but only for the cases in which major landfill design issues persist or the permit applicant has not provided complete and proper information with the permit application.

The Kentucky Department of Environmental Protection indicated that, based on their historical records, the average permit approval period was 3½ years. They also stated that the State was sensitive to an applicant's time restrictions and the permit approval times had varied depending on the level of urgency surrounding a permit application. They further confirmed that they would work with the industry to meet compliance deadlines, such as those required by CAIR, as efficiently as possible.

Based on the above investigations, EPA notes that the landfill permitting requirements quoted by all States fall well within the 4¾-year implementation period for Phase I. Also, landfill permitting activities as well as its design and construction can be accomplished, independent of the design and construction of the FGD system. The EPA, therefore, believes that landfill permitting is not a constraint for compliance with the rule.

(C) Project Financing Issue

Commenters representing small units or units owned by the co-operatives raised concerns that arrangement of financing for control retrofits could take long periods of time. However, EPA's projections show a larger portion of the smaller units installing controls only during the second phase. These projections also show that only a few co-operative units would require installation of controls. Therefore, EPA believes that the Phase I implementation periods of approximately 3¾ and 4¾ years for NO_X and SO_2 controls, respectively, provide enough time for completing the financing activity for all controls. Of course, if individual sources face difficulties in meeting deadlines to implement controls, they may use the allowance-trading provisions of CAIR to defer implementation of controls.

(D) Electrical Grid Reliability Issue

Based on available data for the NO_X SIP Call, approximately 68 GW of SCR retrofits were started up during the years from 2001 to 2003. This included approximately 42 GW of SCRs in 2003 alone, which exceeds the combined capacity of SCR and FGD retrofits for CAIR that we expect to be started up in any one year. The EPA projects that startup of the 23.9 GW of SCR and 39.6 GW of FGD capacity required for Phase I would be spread over a period of two years (2008 and 2009). The total capacity of units starting up in each year is therefore expected to be approximately 32 GW (half of the combined SCR and FGD capacity of 63.5 GW).

The NO_X SIP Call experience shows that outages required to complete installation of the large SCR capacity, especially during 2003, did not have an adverse impact on the electrical grid reliability. The EPA notes that the outage requirement for SCR usually exceeds that for scrubbers, since SCR is located closer to the boiler and it may be more intrusive to the existing equipment. As shown above, the CAIR retrofits are projected to include more scrubbers than SCRs and the capacity of these retrofits starting up in any one year is below the capacity of the NO_X SIP Call units that started up in 2003. Therefore, the overall outage requirement for CAIR would be less than that experienced for the NO_X SIP Call.

Based on published industry data, the planned outage times for coal-fired units from 2001–2002 (SCR buildup years) decreased by over two percent compared to the previous two years from 1998–1999.[74] The reduction in the overall outage time in the 2001–2002 period also shows that the SCR retrofits did not adversely affect the grid reliability. Therefore, EPA believes that the concern regarding electrical grid reliability is unwarranted for CAIR retrofits.

(II) Availability of Boilermaker Labor in Phase I

The EPA has performed several analyses to verify the adequacy of the available boilermaker labor for the installation of CAIR's Phase I controls. These analyses were not just based on using EPA's assumptions for the key

[72] Reference: Announcement by Wheelabrator Air Pollution Control Inc. for award of a wet limestone scrubber system for K.C. Coleman Generating Station, Western Kentucky Energy Corp., August 2, 2004, and other related documents. (docket no. OAR–2003–0053–1953)

[73] Summary of telephone calls with States to discuss landfill permit timing (docket no. OAR–2003–0053–1927).

[74] Reference: "NERC, Generating Availability Data System: All MW Sizes—Coal-Fired Generation Report," *http://www.nerc.com/~filez/gar.html*, October 17, 2003.

factors affecting the boilermaker availability, but also the assumptions suggested by commenters for these factors to determine how sure we could be on our key conclusions. If there was insufficient labor for the amount of air pollution controls that will need to be installed, the program would be in jeopardy. For instance, shortages in manpower could lead to high wage rates that could substantially increase construction costs for pollution controls and reduce the cost effectiveness of this program. During the peak of the NO_X SIP Call SCR construction period, the power industry did experience an increase in the SCR construction costs. One of the reasons cited for these higher costs was an increased demand for boilermaker labor. The EPA strongly wanted to avoid this possibility for CAIR. The EPA also wanted to be very sure that the levels of controls and timing of the program's start were appropriate. Therefore, EPA tended to make conservative assumptions and to test the sensitivity of key assumptions that were uncertain.

Boilermakers population, percentage of boilermakers available to work on the control retrofit projects, and average annual hours of boilermaker employment are some of the key factors that affect boilermaker availability. As discussed previously, EPA's assumptions on these factors were validated or revised through our discussions with IBB, BLS, and NACBE.

Two other key factors that also have an impact on boilermaker availability include the number of required SCR and FGD retrofits and boilermaker duty rates (boilermaker-year/MW, *i.e.*, the number of boilermaker years needed to install SCR or FGD on one MW of electric generation capacity). The EPA's projections for the required SCR and FGD retrofits are based on the IPM analyses performed for the final rule. The basis for the boilermaker duty rates used by EPA is a report prepared by EPA for the proposed Clear Skies Act, "Engineering and Economic Factors Affecting the Installation of Control Technologies for Multi-Pollutant Strategies."

Some commenters have suggested use of EIA's projections of natural gas prices and electricity demand rates that are higher than EPA's projections used in the IPM analyses. Use of higher values for these parameters would increase the number of required control retrofits. While not agreeing with these commenters that EIA's projections should replace the data that EPA uses, we acknowledge that there is reasonable uncertainty concerning these assumptions and that addressing the uncertainty explicitly by considering EIA's alternative assumptions is prudent, given the importance of having sufficient labor resources to meet the program's requirements in 2010. Therefore, EPA has performed a sensitivity analysis to determine the required control retrofits resulting from the use of these EIA projections, and then used the increased amounts of the required control retrofits to determine their impacts on the boilermaker availability.

The EPA also received comments suggesting that the SCR costs used in our IPM analyses were below the levels experienced in recent SCR installations. We note that the SCR costs were revised in the IPM analyses performed for the final rule, to reflect recent industry experience. One commenter reported SCR capital costs that exceeded our revised costs. The EPA does not agree with these reported costs, as they are not supported by the overall cost data submitted by the commenter. However, to address the concern with the SCR costs in general, we have performed a sensitivity analysis to determine the impact of increasing the SCR capital and fixed O&M costs by 30 percent.

An increase in the SCR costs would affect the amounts of the required control retrofits. Table IV–12 shows the projected Phase I SCR and FGD retrofits for the above two alternate cases, based on using EIA's projections for natural gas prices and electricity demand rates and higher SCR costs.

TABLE IV–12.—IPM PROJECTIONS FOR TOTAL CAPACITIES OF FGD AND SCR RETROFIT PROJECTS FOR COAL-FIRED ELECTRIC GENERATION UNITS FOR CAIR PHASE I USING EPA AND COMMENTER ASSUMPTIONS

Retrofit type	EPA base case assumptions	EIA projections [1]	EIA projections and higher SCR costs [2]
CAIR FGD, GW	37	45.4	47.9
Non-CAIR FGD, GW	2.6	3.7	Included Above
CAIR SCR, GW	18.2	20.6	25.2
Non-CAIR SCR, GW	5.7	4.6	Included Above

[1] The required control retrofits shown are based on using EIA projections for natural gas prices and electricity demand rates.
[2] The required control retrofits shown are based on using EIA projections for natural gas prices and electricity demand rates as well as 30 percent higher SCR capital and fixed O&M costs.

As shown in Table IV–12 above, the alternate case using just the EIA's projections for natural gas prices and electricity demand rates requires the largest amounts of control retrofits. Therefore, a boilermaker availability analysis was performed for just this case.

One commenter has suggested use of higher boilermaker duty rates for both SCR and FGD retrofits, based on an industry survey they had conducted. Use of higher duty rates would result in more boilermakers being needed to install the controls. Table IV–13 shows the boilermaker duty rates used by EPA as well as those suggested by this commenter.

TABLE IV–13.—BOILERMAKER DUTY RATES FOR SCR AND FGD SYSTEMS FOR COAL-FIRED ELECTRIC GENERATION UNITS

Source	FGD	SCR
EPA's estimate, boilermaker-year/MW	0.152	0.175
Commenter-suggested, boilermaker-year/MW [1]	0.269	0.343

[1] The duty rate values shown are average values calculated by using the FGD and SCR correlations provided by the commenter along with the MW size of individual units projected by the IPM to require FGD or SCR controls for Phase I of CAIR.

Our review of the limited supporting information submitted by the commenter about their survey for these duty rates shows that they are based on data from a small number of installations and represent scope of work at each power plant that is well above the average installation conditions used in determining the duty rates used by EPA. Therefore, EPA considers these commenter-suggested duty rates to represent the upper end of the range of values that would be expected for the SCR and FGD controls under consideration. This is also supported by the average duty rate (0.199) submitted by one other commenter for installing FGDs, which is well below the average duty rate (0.269) suggested by the first commenter. However, EPA also notes that the duty rate suggested by the second commenter is higher than that (0.152) used by EPA.

The EPA conducted the boilermaker analysis for the final rule using alternative assumptions for boilermaker duty rates. These alternative assumptions yield a range of estimates of the amount of control that could feasibly be installed. In keeping with EPA's desire to be very sure that there is sufficient boilermaker labor available during the CAIR's Phase I construction period, the Agency has considered the most stringent duty rates suggested by the first commenter, as well as other duty rates (see Table IV–13), in analyzing the impact on the boilermaker availability. The EPA considers this to be a bounding analysis in which the estimates based on the most stringent duty rates reflect conditions with the highest retrofit difficulty level that EPA could realistically expect to occur. We expect that the average boilermaker duty rates applicable to the overall boiler population required to retrofit controls under this rule would not fall outside of the values used by EPA and those suggested by the first commenter.

In the NPR, only the union boilermakers belonging to the IBB were considered in the EPA's availability analysis. Some commenters have pointed out that additional sources of boilermakers will be available for CAIR. Two such sources include non-union and Canadian boilermakers. IBB has confirmed that 1,325 Canadian boilermakers were brought in to support the NO_X SIP Call SCR work in 2003. The EPA also projects that approximately 15 percent of FGDs and 43 percent of SCRs will be installed for Phase I in the traditionally non-union States and believes there will be nonunion labor available in these States. One source has confirmed that a substantial amount of SCR retrofit work during the 2000–2002 period was executed by non-union labor.[75] Based on these data, we have conservatively assumed that 1,000 boilermakers from Canada will be available and 10 percent of the retrofits would be installed by non-union boilermakers for Phase I.

Based on EPA data, an average 32 GW of new gas-fired, combined cycle generating capacity was being added annually, during the NO_X SIP Call SCR construction years of 2002 and 2003. A substantial number of boilermakers were involved in the construction of these gas-fired projects. Since projections for the timeframe relevant to CAIR retrofits show only a small amount of new electric generating capacity being added, the number of boilermakers involved in the building of new plants would be smaller and more of the boilermaker population would be available to work on the Phase I retrofits. As pointed out by one commenter, the boilermakers available due to this projected drop in the building of new generation capacity represents a third additional source of boilermakers for CAIR.

The EPA projects only an insignificant amount of new coal-fired generating capacity being added during Phase I. The most recent EIA's projections also do not show any new coal fired capacity being added between 2007 and 2010, the timeframe relevant to boilermaker-related construction activities for CAIR.[76] However, EPA's projections do show approximately 15 GW of new or repowered gas-fired capacity being added, during 2007–2010. The EIA's projections for new gas-fired capacity addition during Phase I are well below those of EPA's. We used the more conservative EPA projections for new generating capacity additions and the gas-fired capacity additions during the NO_X SIP Call period to estimate the additional boilermaker labor that would become available for the Phase I retrofits. This estimate shows that approximately 28 percent more boilermakers would be available to work on the CAIR retrofits, because of a slowdown in the construction of new power plants.[77]

In the boilermaker availability analyses performed by EPA, the required boilermaker-years were determined for each case, based on the amounts of SCR and FGD retrofits being installed and the pertinent boilermaker availability factors and duty rates. The required boilermaker-years were then compared to the available boilermaker years to verify adequacy of the boilermaker labor. All sources of boilermakers were considered in these analyses, including the union boilermakers and the boilermakers from the three additional sources discussed previously.

The EPA's boilermaker availability analyses firmly support CAIR's Phase I requirements. Using EPA's projections of FGD and SCR retrofits installed for Phase I and EPA's assumptions for boilermaker duty rates, there are ample boilermakers available with a large contingency factor to support the predicted levels of CAIR retrofits. For the most conservative analysis using the boilermaker duty rates suggested by one commenter and the EIA's projections for natural gas prices and electricity demand rates, there are sufficient boilermakers available with a contingency factor of approximately 14 percent.

In the NPR proposal, EPA estimated that a contingency factor of 15 percent was available to offset any increases in boilermaker requirements due to unforeseen events, such as sick leave, time lost due to inclement weather, time lost due to travel between job-sites, inefficiencies created due to project scheduling issues, etc. The EPA had considered this 15 percent contingency factor to be adequate for these unforeseen events. We also note that EPA did not receive any comments suggesting a need for a higher contingency factor.

The EPA also notes that the above boilermaker labor estimates have not considered the benefits of the experiences gained by the U.S. construction industry from the recent buildup of large amounts of air pollution controls, including the NO_X SIP Call SCRs. As pointed out by one commenter, such experiences include use of modular construction, which can result in a significant reduction in the required boilermaker labor for CAIR retrofits. Also, as a result of this controls buildup, an increased number of experienced designers and construction personnel have become available to the industry. Some of these benefits may be offset by factors, such as the increased level of retrofit difficulty expected for the CAIR retrofits, especially for the small size units. However, we believe that the net effect of this experience is a more efficient use of the boilermaker labor in the construction of the air

[75] Reference: "Email from Institute of Clean Air Companies," September 15, 2004 (See Appendix B, Boilermaker Labor Analysis and Installation Timing).

[76] Reference: "Annual Energy Outlook 2005 (Early Release), Tables A9 and 9," December 2004, *http://www.eia.doe.gov/oiaf/aeo/index.html.*

[77] TSD, "Boilermaker Labor and Installation Timing Analysis," (Docket no. OAR–2003–0053–2092).

pollution control retrofits projects. Unfortunately, EPA cannot quantify the value of this experience in determining its overall impact on boilermaker requirements.

Therefore, EPA considers the 14 percent contingency in the available boilermaker-years for the above bounding analysis using commenter-suggested assumptions to be adequate.

ii. Issues Related to Compliance Deadline Acceleration

(I) Acceleration of Phase I Compliance Deadline

As a result of EPA's review of the comments received and further investigations conducted by the Agency for the final rule, the compliance deadline for implementing Phase I NO_X controls has been moved up by one year. We believe that the affected plants would have sufficient time with this change to meet the CAIR requirements associated with NO_X emissions, as long as the compliance deadline for implementing SO_2 controls is not changed. The EPA does not agree that accelerating the originally proposed Phase I compliance deadline of January 1, 2010, for implementing both NO_X and SO_2 controls is possible. These issues are discussed below.

(A) Two-Year Phase I Acceleration for NO_X and SO_2 Controls

With today's final action and allowing 18 months for the SIPs, sources installing controls would have approximately 3¼ years for implementing the rule's requirements. Some commenters suggested moving Phase I forward by 2 years, with a new compliance deadline of January 1, 2008, which would reduce the implementation period to 1¼ years. It is recognized that sources generally would not initiate any implementation activities that require major funding, before the final SIPs are available.

The EPA's projections show that, for SCR installation on one unit, an average 21-month schedule is required to complete purchasing, construction, and startup activities. For the same activities for FGD, an average 27-month schedule is required. As can be seen, the total time required for just one SCR or FGD installation exceeds the 1¼-year implementation period available for Phase I, if the compliance deadline is moved to January 1, 2008.

(B) One-Year Phase I Acceleration for NO_X and SO_2 Controls

If the Phase I compliance deadline for both NO_X and SO_2 controls is moved up by 1 year, the affected facilities would have 2¼ years or 27 months to complete installation of these controls. As discussed in the preceding section, FGD installation on one unit requires an average 27-month schedule to complete purchasing, construction, and startup activities.

The sources installing controls on more than one unit at the same facility would likely stagger the outage-related activities, such as final hookup of the new equipment into the existing plant settings and startup, to minimize operational disruptions and avoid losing too much generating capacity at one time. The EPA projects that an average 2-month period is required to complete the outage construction activities and a 1-month period to complete the startup activities for FGD. Therefore, if back-to-back outages are assumed for a plant installing FGD on just two units, the 27 months needed to install FGD on the first unit and an additional 3 months needed for outage activities on the second unit would result in an overall schedule requirement of 30 months. This 30-month schedule exceeds the available 27-month implementation period, if the compliance deadline is moved up by 1 year. For plants installing FGD controls on more than two units and performing hookup construction and startup activities in back-to-back outages, an additional 3 months would be added to the 30-month schedule requirement for each additional unit.

The EPA notes that certain plants installing multiple-unit controls may be able to meet the compliance deadline requirement by using alternative approaches, such as simultaneous unit outages and purchase of allowances to defer installation of controls on some units. However, our projections for the final rule show that some facilities would be installing FGD controls on five multiple units at a single site. Moreover, these projections show 26 plants requiring FGD retrofit on more than one unit, which represents a major portion of the total number of plants required to install such controls under CAIR. We believe it would not be appropriate to expect this number of plants to resort to alternative means to accommodate such installations, such as simultaneous unit outages or purchasing of allowances.

For FGD retrofits, some plants would be required to obtain solid waste landfill permits. As discussed previously, the time required to obtain these permits could range from one to 3½ years. With the compliance deadline moved up by one year, the overall implementation period would be reduced from 4¾ to 3¾ years. For those plants subjected to a 3½-year permit approval period, only 3 months would be available to prepare the permit applications at the beginning of the compliance period and to prepare the landfill area for accepting the waste after permit approval. The EPA does not believe that 3 months is adequate for such activities. These plants would, therefore, need the 4¾-year implementation period to complete activities related to landfills associated with the FGD systems.

The EPA also performed an analysis to verify if the available boilermaker labor is adequate to support the January 1, 2009, compliance deadline for both NO_X and SO_2. This analysis was performed, using commenter-suggested boilermaker duty rates and EIA's assumptions for the natural gas prices and electricity demand rates. The results show that given these assumptions sufficient number of boilermakers will not be available and that there will be a shortfall of approximately 32 percent in the boilermakers available to support Phase I activities for this case.

Considering the constraints identified in the above analyses for the FGD installation schedule requirements and boilermaker labor availability, EPA believes that it is not reasonable to move the Phase I compliance deadline for both NO_X and SO_2 caps to January 1, 2009.

(C) One-Year Phase I Acceleration for NO_X Controls Only

A 1 year acceleration would result in a compliance deadline of January 1, 2009, for installing Phase I NO_X controls. With this change, the affected sources installing these controls would have approximately 2¼ years for implementing the rule's requirements, following the approval of State programs. However the implementation period for installing FGD controls would still be at 3¼ years.

As shown previously, 21 months would be required to complete purchasing, construction, and startup of SCR on one unit. For multiple-unit installations with back-to-back unit outages for the tie-in construction and startup, the available 2¼-year implementation period would permit staggering of SCR installations on a maximum of three units (see the above referenced TSD). For a plant requiring SCR retrofit on more than three units, simultaneous outages of two units would become necessary. However, EPA notes that there are only six plants projected to require SCR installation on more than three units and, therefore, it is expected that simultaneous outages of two units at each of these plants would not have an adverse impact on the reliability of the electrical grid.

In addition, the plants installing SCR on more than three units at the same site would have two other options to meet the rule's requirements, without having to resort to simultaneous two-unit outages. First, these plants would be able to defer installation of SCRs on some of the units by receiving allocated allowances or purchasing allowances from the 200,000-ton Compliance Supplement Pool being made available as part of CAIR.[78] Second, the outage activities for some of the units at these plants could be extended into the first quarter of 2009, which is beyond the compliance deadline of January 1, 2009, since these units would not generate NO_X emissions during an outage and therefore not require any allowances to compensate for them. The EPA's projections show that, of the above six plants installing SCR on more than three units, four of them require SCR retrofits on four units each. If it is assumed that these four plants would perform outage activities on the fourth unit during the first quarter of 2009, there would only be two plants left that would be required to either purchase allowances or perform work during simultaneous outages.

The EPA also notes that the total schedule requirements for multiple-unit plants can be reduced further by performing some of the activities, especially those related to planning and engineering, prior to the 2¼-year period. Also, with the total installation time requirement for FGD being more than that for SCR, EPA expects the outages associated with most Phase I FGDs to take place after January 1, 2009. The overall impact of the outages taken for these SCR and FGD retrofits would, therefore, be minimized.

The EPA also performed an analysis to determine the impact of an 1-year acceleration in the NO_X compliance deadline on Phase I boilermaker labor requirements. Since the amounts of the required Phase I NO_X and FGD retrofits are not affected by this change, the overall boilermaker requirements for this phase will remain the same as previously reported for the case with the same compliance deadline for both NO_X and SO_2. However, with the new NO_X compliance deadline, installation of all NO_X retrofits would have to be completed by January 1, 2009, and some of the FGD construction work requiring boilermakers would also be done during this period. The EPA assumed that, along with completing installation of all SCRs, 35 percent of the boilermaker labor required to install all FGDs would be used in the period prior to January 1, 2009. This is a conservative assumption, since the amount of boilermaker labor used for this period would be greater than 50 percent of the total Phase I boilermaker labor requirement. The analysis performed by EPA shows that sufficient boilermakers would be available with a contingency factor of approximately 14 percent to install all SCR controls and 35 percent of the FGD retrofit work by January 1, 2009. This analysis is based on the most conservative assumptions, using the boilermaker duty rates suggested by one commenter and the EIA's projections for natural gas prices and electricity demand rates. Based on the above analyses, EPA believes that moving the compliance deadline for Phase I for both NO_X and SO_2 is not practical. However, a 1-year acceleration in the compliance deadline for NO_X only is feasible. Since EPA is obligated under the CAA to require emission reductions for obtaining NAAQS to be achieved as soon as practicable, we have based the final rule on two separate Phase I compliance deadlines of January 1, 2009, and January 1, 2010, for NO_X and SO_2, respectively.

(II) Implementing All Controls in Phase I

The EPA proposed a phased program with the consideration that for engineering and financial reasons, it would take a substantial amount of time to install the projected controls. This program would require one of the most extensive capital investment and engineering retrofit programs ever undertaken in the U.S. for pollution control. The capital investment for pollution control for CAIR that would be installed by 2015 is estimated to be approximately 15 billion dollars. By 2015, close to 340 control unit retrofits will occur. This is occurring at a time when the industry also faces another major infrastructure challenge—upgrading transmission capacity to make the grid more reliable and economic to operate. This also will cost tens of billions of dollars.

The proposed program's objective was to eliminate upwind states' significant contribution to downwind nonattainment, providing air quality benefits as soon as practicable. A phased approach was also considered necessary because more of the difficult-to-retrofit and finance, smaller size units would be included in the second phase, which would allow them to complete activities necessary for implementing the required controls as well as provide them an opportunity to benefit from the lessons learned during the first phase.

In general, environmental controls resulting from legislative or regulatory actions are applied to those units first that offer superior choices from constructability and cost-effectiveness standpoints. Experience gained by the industry from these installations can then be used to develop innovative solutions for any constructability issues and to improve cost effectiveness, as these technologies are applied to harder-to-control units. The EPA believes that this phenomenon applies to the application of the SCR and FGD technologies at coal-fired power plants.

In the last few years, SCR and FGD systems have been added to several existing coal-fired units, under the NO_X SIP Call and Acid Rain Program. These were mainly large units that had features, such as spacious layouts, amenable to the retrofit of the new air pollution control equipment. The units installing controls during Phase I of CAIR would, in general, be smaller in size and would offer relatively more difficult settings to accommodate the new equipment. These units would certainly benefit from the experience the industry has gained from the installations completed in recent years.

A large portion of the units (47 percent) projected to implement controls during the second phase consists of even smaller units, less than 200 MW in size. Compared to larger units, the retrofits for these smaller units would be more difficult to plan, design, and build. Historically, smaller units have been built with less equipment redundancy, smaller capacity margins, and more congested layouts. It is likely, therefore, to be more difficult and require additional design efforts to accommodate the new equipment into the existing settings for the smaller units. Use of lessons learned by firms constructing these units from the previous installations, including those to be built during the first phase, would help streamline this process and maintain the cost effectiveness of these installations. Moving a large portion of the retrofits required for these smaller units to the second phase also provides more time to complete the required retrofit activities.

Because EPA's projections for the second phase include a large proportion of smaller units, the total number of units requiring NO_X and SO_2 controls exceeds that in the first phase (186 vs. 153). Requiring an acceleration of the second phase controls to be completed in the first phase would, therefore, more than double the number of retrofits

[78] The 200,000-ton Compliance Supplement Pool is apportioned to each of the 23 States and the District of Columbia that are required by CAIR to make annual NO_X reductions, as well as the 2 States (Delaware and New Jersey) for which EPA is proposing to require annual NO_X reductions.

required for the first phase from 153 to 339. Based on data available from EPA and other sources, the industry completed 95 SCR installations for the NO_X SIP Call in 2002 and 2003. If the 2004 projections for the NO_X SIP Call are added to this number, the total number of SCR retrofits over the 2002–2004 period would be 140. This is less than half the number that would be required for CAIR during a similar period, if the Phase II requirements are implemented along with the Phase I requirements. Also, the combined capacity for FGD and SCR retrofits required for Phase I would be 122.5 GW, which is approximately 57 percent greater than the installed SIP-Call SCR capacity for the 2002–2004 period. Such a change in the rule would therefore amount to imposing a requirement over the power industry that is significantly more demanding and burdensome than what the industry was required to do under the NO_X SIP Call rule.

The EPA notes that critical resources other than the boilermakers are needed for the installation of SCR and FGD controls, such as construction equipment, engineering and construction staffs belonging to different trades, construction materials, and equipment manufacturers. Some commenters, based on their experience with NO_X SIP Call, also pointed out that the requirement for some of these resources, especially construction equipment (*e.g.*, large cranes used to mount SCR and scrubber vessels above ground), construction materials, equipment manufacturing shop capacities, and engineering and construction management teams overseeing these projects, is affected directly by the number of installations. The greater the requirement is to install a large number of retrofits by 2010, the greater would be the need for all these resources, which would be limited in the short term, as demands from equipment vendors, project teams, and material suppliers ramp up. In the NO_X SIP Call, this led to shortages and bottlenecks in projects in certain areas, causing increased project times and costs. The EPA wants to avoid creating a similar situation by requiring too much at once.

The EPA has also acknowledged the increase in SCR costs during the NO_X SIP Call implementation period, most likely due to an increase in construction costs (resulting from increased demand for boilermaker labor) and steel prices. The EPA has revised its estimates of SCR capital costs in the IPM runs for the final rule and believes the conservatism in its FGD capital costs also accounts for this factor.

The EPA believes that moving the Phase II requirements to the Phase I period could cause near-term shortages in some of the critical resources. This would further increase compliance costs and could remove the highly cost-effective nature of these controls and lead to a greater demand for natural gas.

In addition to the above, financing a large amount of controls for Phase I may prove challenging, especially for the coal plants owned by deregulated generators. As discussed later in this section, such generators are continuing to face serious financial challenges, and many have below investment grade credit ratings. This significantly complicates the financing of costly retrofit controls. Such plants would also not have the certainty of regulatory recovery of investments in pollution control, and would have to rely on the market to recover their costs. Having a second phase cap would allow these companies additional time to strengthen their finances and improve their cash flow.

In the interest of being prudent in evaluating the need to phase in the program, EPA also performed an analysis to determine if the available boilermaker labor would be adequate to support installation of all Phase I and II controls in 2010. This analysis was conservatively based on using commenter-suggested boilermaker duty rates and EIA's projections for gas prices and electricity demand rates. The results show that a sufficient number of boilermakers will not be available and that there will be a shortfall of approximately 25 percent in the boilermakers available to support Phase I activities for this case.

Based on the above analyses, EPA believes that implementation of controls for both phases in Phase I is impractical. We also believe that it is prudent and reasonable in requiring the industry to undertake this massive retrofit program on a two-phase schedule, to be largely completed in less than a decade.

(III) Acceleration of Phase II Compliance Deadline

The EPA does not believe that acceleration of the compliance deadline for the second phase is reasonable. As pointed out earlier, a large portion of the units projected to install controls during the second phase consists of small units, less than 200 MW in size. Due to the issues related to financing of the retrofit projects for some of these units and considering that planning and designing of controls for these units is likely to take longer, EPA does not consider the schedule acceleration to be appropriate.

The EPA notes that Phase I of CAIR is the initial step on the slope of emissions reduction (the glide-path) leading to the final control levels. Because of the incentive to make early emission reductions that the cap-and-trade program provides, reductions will begin early and will continue to increase through Phases I and II. The EPA, therefore, does not believe that all of the required Phase II emission reductions would take place on January 1, 2015, the compliance deadline. These reductions are expected to accrue throughout the implementation period, as the sources install controls and start to test and operate them.

The EPA also notes that the 5-year implementation period for Phase II is consistent with other regulations and statutory requirements, such as title IV for SO_2 and NO_X controls. In addition, some commenters have cited a need for a 6-year period for obtaining financing for plants owned by the co-operatives. These facilities are likely to commit funds for major activities, only after financing has been obtained. Therefore, for such facilities, a period of approximately four years would be available for procuring, installing, and startup activities, assuming that the financing activities were started right after the rule is finalized. Since the plants owned by co-operatives are usually small in size, they are likely to require and be benefitted by the extra time allowed to them by this four-year implementation period.

The EPA also performed an analysis to verify adequacy of the available boilermaker labor for pollution control retrofits the power industry will install to comply with the Phase II CAIR requirements. A 36-month construction period requiring boilermakers was conservatively selected for this analysis. Based on the IPM analysis for the final rule, conservatively, the power industry will build 27.5 GW of FGD and 26.6 GW of SCR retrofits for compliance with lower emission caps that go into effect for NO_X and SO_2 in 2015. The analysis was based on using EIA's projections for the natural gas prices and electricity demand rates and the commenter-suggested boilermaker duty rates. The results show availability of ample boilermakers with a contingency factor of 46 percent to support Phase II activities.

The EPA notes that the retrofits that will occur in Phase II will be smaller, more numerous, and more challenging, since the easiest controls will likely be installed in Phase I. Therefore, having a greater contingency factor (as we do) is warranted. This is further supported when the uncertainty in predicting the

construction activities in the areas outside of air pollution controls is considered. Notably after 2010, the excess generation capacity that we have today is no longer expected to be present and there may be a shift towards a requirement for increasing generation capacity. Increased construction of new power plants will have a direct impact on the availability of boilermakers for the Phase II controls. The EPA believes that a higher contingency factor for Phase II is desirable to ensure that the industry will succeed in getting the required reductions at the required time.

Any acceleration of the Phase II compliance deadline will also cause an appreciable reduction in the above estimated contingency factor for boilermaker labor. For example, based on EPA analysis, an acceleration of one year is projected to reduce this contingency factor to only about one percent. Therefore, EPA believes that acceleration of the Phase II compliance deadline cannot be justified.

3. Assure Financial Stability

The EPA recognizes that the power sector will need to devote large amounts of capital to meet the control requirements of the first phase. Furthermore, over the next 10 years, the power sector is facing additional financial challenges unrelated to environmental issues, including economic restructuring impacts, investments related to domestic security and investments related to electrical infrastructure. Among the consideration of other factors, EPA believes it is important to take into account the ability of the power sector to finance the controls required under CAIR. A detailed assessment of the status of the financial health of the U.S. Utility Industry, particularly of the unregulated sector is offered in the TSD, "U.S. Utility Industry Financial Status and Potential Recovery."

Commenters have noted that they appreciate EPA's growing realization that many companies may have difficulty securing financing, and the agency's establishment of a two-phase reduction program on both technical and financial grounds.

Utilities and non-utility generating companies have felt significant financial pressure over the past 5 years. The years 2000 and 2001 saw the escalation and fallout from the California energy crisis, the bankruptcy of Enron, and a massive building program, largely on the side of the merchant generating sector. Subsequent low power margins and large debt obligations have led to a significant number of credit downgrades of utilities and power generators and the bankruptcy of coal-generating merchant companies. According to Standard and Poor's, a leading provider of investment ratings, there were almost ten times more downgrades of utility credit in 2002 and 2003 than there were upgrades. While more recently the sector has stabilized, a significant number of owners of coal-fired capacity in the CAIR region, particularly those with deregulated capacity, are still at below investment-grade credit ratings.

In general, EPA believes that regulated plants, given appropriate regulatory requirements, should not face significant financial problems meeting their obligations under CAIR. While EPA recognizes that issues such as the expiration of rate caps and the time lags associated with regulatory approval and recovery may provide cash flow challenges, regulated electricity rates are generally seen as a positive factor in credit ratings, as entities are allowed a recovery on prudent investment through rate cases (and, in some jurisdictions, the recovery of allowance expenditures through fuel adjustment clauses).

Deregulated coal capacity (operating in an environment of market prices rather than electricity rates set by regulators) has no such guarantees, and would need to recover investments in pollution control from market prices (which in many cases are not set by coal units). Additionally, deregulated entities, because of their more aggressive building and borrowing strategies and reliance on market prices (which now reflect the current capacity overbuild), have faced more significant financial difficulties (including a number of bankruptcies) and are currently in a weaker position financially.[79] A number of firms that have avoided financial distress in the near term have done so by renegotiating their pending debt, postponing payment. A good portion of this debt is of a shorter-term nature, and will be coming due in the next five years.

Such financial difficulties increase the cost of capital necessary for capital expenditures and affect the availability of such capital, making required controls more expensive. Recent financial troubles have been cited as the reason for the deferment or cancellation of pollution control expenditures. Should interest rates rise in the future, it will become more difficult and costly for utilities seeking financing.

These problems impact a significant segment of coal generators, as deregulated coal capacity makes up about a third of all U.S. coal capacity and almost 90 percent of this deregulated capacity would be affected by CAIR requirements.

Given the lead times needed to plan and construct such equipment, as well as the financial uncertainty many of the plant owners are confronting, companies may find it difficult to install controls at their plants too quickly. The EPA believes that the choice of timing of the emission caps in CAIR would allow firms time to improve their current and near-term financial difficulties (through reorganization, mergers, sales, etc.). Phasing in the more stringent emission caps by 2015 would also spread investment requirements and resulting cash flow demands, rather than forcing firms to finance a large spike in investments in a very short time period, while they are still trying to recover financially.

The timing of controls expected to be installed as a result of CAIR are similar to that noted in EPA's analysis of the Clear Skies proposal. The EPA looked in detail at the potential financial impact of the Clear Skies program (particularly focusing on the deregulated coal sector). The EPA found that some individual deregulated coal plants might be adversely affected, but on average such plants would actually experience a small financial improvement under Clear Skies. Baseload deregulated coal plants would benefit from even slight increases in the price of natural gas (units burning natural gas generally set the wholesale price of electricity on the margin in the regions where deregulated coal is located). These units would also be recipients of allocated allowances. Overall, the phased in nature of CAIR, the fact that most coal plants continue to be regulated and the fact that sources would also receive allowances, would all mitigate the financial impact of this rule.

The EPA believes that the timing requirements finalized today reflect a prudent and cautious approach designed to assure that the industry will succeed in implementing this program. The EPA believes that deferring the second phase to 2015 will provide enough time for companies to raise additional capital needed to install controls. Also, we believe that the implementation period should account (at least broadly) for the possibility that electricity demand or natural gas prices may increase more than assumed, and therefore that additional control equipment would be needed. Allowing until 2015 for implementation of the more stringent control levels in today's rule will provide more flexibility in the

[79] In fact, between nine and eleven (depending on the credit agency) of the twenty largest owners of deregulated coal capacity in the U.S. currently have below-investment-grade credit ratings.

event of greater electricity demand and will ensure that power plants in the CAIR region will have the ability, both technical and financial, to make the pollution control retrofits required.

Currently, EPA is cooperating with the National Association of Regulatory Utility Commissioners (NARUC) in developing a menu of policy options and financial incentives for encouraging improved environmental performance for generation. A survey of a number of States was conducted as part of this effort, and policies such as pre-approval statutes for compliance plans, state income tax credits, accelerated depreciation, and special treatment of allowance transactions were cited as examples of such policies [80]. Such policies will ease some of the financial pressures of CAIR by providing greater regulatory certainty and lowering the effective costs of controls.

D. Control Requirements in Today's Final Rule

1. Criteria Used To Determine Final Control Requirements

The EPA's general approach to developing emission reduction requirements—basing the requirements on the application of highly cost-effective controls—was adopted in the NO_X SIP Call and has been sustained in court. In the NPR, the Agency proposed this approach for developing SO_2 and NO_X emission reduction requirements. The majority of commenters accepted this basic approach for determining reduction requirements. Some commenters did suggest other approaches, however, as discussed above.

Many commenters suggested that the CAIR regionwide SO_2 and NO_X control levels should be more or less stringent than the levels proposed in the NPR. The EPA has determined that the control levels that we are finalizing today are highly cost-effective and feasible, and constitute substantial reductions that address interstate transport, at the outset of State and EPA efforts to bring about attainment of the $PM_{2.5}$ NAAQS (EPA believes that most if not all States will obtain CAIR reductions by capping emissions from the power sector). Today, EPA finalizes the use of both average and marginal cost effectiveness of controls as the basis for determining the highly cost-effective amounts.

In the CAIR NPR, EPA proposed criteria for determining the appropriate levels of SO_2 and NO_X emissions reductions, and stated that EPA considered a variety of factors in evaluating the source categories from which highly cost-effective reductions may be available and the level of reduction assumed from that sector (69 FR 4611). The EPA has reviewed comments on its NPR, SNPR and NODA and conducted further analyses with respect to the proposed criteria, and is finalizing its control requirements in today's action. Following is a brief summary of EPA's conclusions based on the criteria.

The availability of information, and the identification of source categories emitting relatively large amounts of the relevant emissions, are two criteria used in EPA's evaluation of the CAIR program. In the NPR, EPA stated that EGUs are the most significant source of SO_2 emissions and a very substantial source of NO_X in the affected region, and further stated that highly cost-effective control technologies are available for achieving significant SO_2 and NO_X emissions reductions from EGUs. We requested comment on sources of information for emissions and costs from other sectors (69 FR 4610). A detailed discussion regarding non-EGU sources is provided above. The EPA has not received additional information that would change its proposed control strategy.

Another criterion is the performance and applicability of control measures. The NPR included a detailed discussion of the performance and applicability of SO_2 and NO_X control technologies for EGUs. In particular, EPA discussed FGD for SO_2 removal and SCR for NO_X removal, both of which are fully demonstrated and available pollution control technologies on coal-fired EGU boilers (69 FR 4612). None of the commenters provided information that differed from EPA's assessment of the performance of these control measures. In addition, the commenters generally supported EPA's assumptions on the applicability of these controls.

The cost effectiveness of control measures is another criterion used in EPA's analysis. As discussed in detail above, EPA determined that the proposed control levels are highly cost-effective, and is finalizing the levels in today's action. The EPA used IPM to analyze the cost effectiveness of the proposed and final CAIR control requirements. IPM incorporates assumptions about the capital costs and fixed and variable operations and maintenance costs of control measures for EGUs. Several commenters suggested that the SCR control cost assumptions that we used in IPM analysis for the NPR were too low. Consequently, we increased the SCR control cost assumptions in IPM and conducted cost effectiveness modeling for the final control requirements using these updated costs.[81] Commenters generally supported our FGD control costs assumptions, which are largely unchanged from the NPR modeling to the modeling for today's final rule.

And finally, EPA considered engineering and financial factors that affect the availability of control measures. The EPA conducted a detailed analysis of engineering factors that affect timing of control retrofits, including an evaluation of the comments received. The EPA's analysis supports its compliance schedule, a two-phase emissions control program with the final phase commencing in 2015, and with a first phase commencing in 2010 for SO_2 reductions and in 2009 for NO_X reductions. Further, EPA's analysis demonstrates that it would not be realistically possible to start the program sooner, or to impose more stringent emissions caps in the first phase.

Based on EPA's review of comments and analysis, EPA determined that the proposed control requirements are reasonable with respect to engineering factors. As discussed above, EPA also considered how to avoid creating financial instability for the affected sector, and how to ensure the capital needed for the required controls would be readily available. Assuming States choose to control EGUs, the power sector will need to devote large amounts of capital to meet the CAIR control requirements.

The EPA explained that implementing CAIR as a two-phase program, with the more stringent control levels commencing in the second phase, will allow time for the power sector to address any financial challenges. The EPA's evaluation of engineering and financial factors supports the decision to implement CAIR as a two-phase program, with the final (second) compliance level commencing in 2015 and a first phased-in level starting in 2010 for SO_2 reductions and in 2009 for NO_X reductions. A description of the final CAIR control requirements follows.

[80] The survey results are in "A Survey of State Incentives Encouraging Improved Environmental Performance of Base-Load Electric Generation Facilities: Policy and Regulatory Initiatives," at *http://www.naruc.org/displayindustryarticle.cfm?articlenbr=21826.*

[81] Detailed documentation of EPA's IPM update, including updated control cost assumptions, is in the docket. The SCR control cost assumptions were presented in a peer-reviewed paper by Sikander Khan and Ravi Srivastava, "Updating Performance and Cost of NO_X Control Technologies in the Integrated Planning Model," at the Combined Power Plant Air Pollution Control Mega Symposium, August 30–September 2, 2004, Washington, DC.

2. Final Control Requirements

Today's final rule implements new annual SO_2 and NO_X emissions control requirements to reduce emissions that significantly contribute to $PM_{2.5}$ nonattainment. The final rule also requires new ozone season NO_X emissions control requirements to reduce emissions that significantly contribute to ozone nonattainment.

The final rule requires annual SO_2 and NO_X reductions in the District of Columbia and the following 23 States: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. (In the "Proposed Rules" section of today's action, EPA is publishing a proposal to include Delaware and New Jersey in the CAIR region for annual SO_2 and NO_X reductions.)

In addition, the final rule requires ozone season NO_X reductions in the District of Columbia and the following 25 States: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

The CAIR requires many of the affected States to reduce annual SO_2 and NO_X emissions as well as ozone season NO_X emissions. However, there are three States for which only annual emission reductions are required (Georgia, Minnesota and Texas). Likewise, there are five States for which only ozone season reductions are required (Arkansas, Connecticut, Delaware, Massachusetts, and New Jersey). The following 20 States and the District of Columbia are required to make both annual and ozone season reductions: Alabama, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin.

Table IV–14 shows the amounts of regionwide annual SO_2 and NO_X emissions reductions under CAIR that EPA projects, if States choose to meet their CAIR obligations by controlling EGUs. Table IV–15 shows the amounts of regionwide ozone season NO_X emissions reductions under CAIR that EPA projects, if States choose to meet their CAIR obligations by controlling EGUs. If all affected States choose to implement these reductions through controls on EGUs, the regionwide annual SO_2 and NO_X emissions caps that would apply for EGUs are also shown in the Table IV–14, and ozone season NO_X caps for EGUs are in Table IV–15. Base case emissions levels for affected EGUs as well as emissions with CAIR are also shown in Table IV–14 and Table IV–15, based on IPM modeling.

The EPA is finalizing the regionwide EGU SO_2 emissions caps—if States choose to comply by controlling EGUs—as shown in Table IV–14[82]. As indicated above, EPA identified SO_2 budget amounts, as target levels for further evaluation, by adding together the title IV Phase-II allowances for all of the States in the CAIR region, and making a 50 percent reduction for the 2010 cap and a 65 percent reduction for the 2015 cap. The EPA determined, through IPM analysis, that the resulting regionwide emissions caps (if all States choose to obtain reductions from EGUs) are highly cost-effective levels.

Also, EPA is finalizing the regionwide EGU annual and ozone season NO_X emission caps—if States choose to comply by controlling EGUs—as shown in Table IV–14 and Table IV–15.[83] As indicated above, EPA identified NO_X budget amounts, as target levels for further evaluation, through the methodology of determining the highest recent Acid Rain Program heat input from years 1999–2002 for each affected State, summing the highest State heat inputs into a regionwide heat input, and multiplying the regionwide heat input by 0.15 lb/mmBtu and 0.125 lb/mmBtu for 2009 and 2015, respectively. The EPA determined, through IPM analysis, that the resulting regionwide emissions caps (if all States choose to obtain reductions from EGUs) are highly cost-effective levels.

The emission reductions, EGU emissions caps, and emissions shown in Table IV–14 are for the 23 States and the District of Columbia that are required to make annual SO_2 and NO_X reductions for CAIR. (Table IV–14 does not include information for the five States that are required to make ozone season reductions only.)

The emission reductions, EGU emissions caps, and emissions shown in Table IV–15 are for the 25 States and the District of Columbia that are required to make ozone season NO_X reductions for CAIR. (Table IV–15 does not include information for the three States that are required to make annual reductions only.)

The EPA is requiring the CAIR SO_2 and NO_X emissions reductions in two phases. For States affected by annual SO_2 and NO_X emission reductions requirements, the final (second) phase commences January 1, 2015, and the first phase begins January 1, 2010 for SO_2 reductions and January 1, 2009 for NO_X reductions. For States affected by ozone season NO_X emission reductions requirements, the final (second) phase commences May 1, 2015 and the first phase starts May 1, 2009. Notably, the first phase control requirements are effective in years 2010 through 2014 for SO_2 and in years 2009 through 2014 for NO_X, and the 2015 requirements are for that year and thereafter.

TABLE IV–14.—FINAL RULE SO_2 AND NO_X ANNUAL BASE CASE EMISSIONS, EMISSION CAPS, EMISSIONS AFTER CAIR AND EMISSION REDUCTIONS IN THE REGION REQUIRED TO MAKE ANNUAL SO_2 AND NO_X REDUCTIONS (23 STATE AND DC) FOR THE INTERIM PHASE (2010 FOR SO_2 AND 2009 FOR NO_X) AND FINAL PHASE (2015 FOR SO_2 AND NO_X) FOR EGUS

(Million Tons)[84]

	Base case emissions	CAIR emissions caps	Emissions after CAIR	Emissions reduced
First phase (2010 for SO_2 and 2009 for NO_X)				
SO_2	8.7	3.6	5.1	3.5
NO_X	2.7	1.5	1.5	1.2

[82] For a discussion of the emission reduction requirements if States choose to control sources other than EGUs, see section VII of this preamble.

[83] For a discussion of the emission reduction requirements if States choose to control sources other than EGUs, see section VII of this preamble.

TABLE IV–14.—FINAL RULE SO_2 AND NO_X ANNUAL BASE CASE EMISSIONS, EMISSION CAPS, EMISSIONS AFTER CAIR AND EMISSION REDUCTIONS IN THE REGION REQUIRED TO MAKE ANNUAL SO_2 AND NO_X REDUCTIONS (23 STATE AND DC) FOR THE INTERIM PHASE (2010 FOR SO_2 AND 2009 FOR NO_X) AND FINAL PHASE (2015 FOR SO_2 AND NO_X) FOR EGUS—Continued

(Million Tons) [84]

	Base case emissions	CAIR emissions caps	Emissions after CAIR	Emissions reduced
Sum	11.4	NA	6.6	4.8
Second Phase (2015 for SO_2 and NO_X)				
SO_2	7.9	2.5	4.0	3.8
NO_X	2.8	1.3	1.3	1.5
Sum	10.6	NA	5.3	5.3

Notes: Numbers may not add due to rounding.

1. The emission caps that EPA used to make its determination of highly cost-effective controls and the emission reductions associated with those caps are shown in Table IV–14. For a discussion of the emission reduction requirements if States control source categories other than EGUs, see section VII in this preamble. Emissions shown here are for EGUs with capacity greater than 25 MW.
2. The District of Columbia and the following 23 States are affected by CAIR for annual SO_2 and NO_X controls: AL, FL, GA, IA, IL, IN, KY, LA, MD, MI, MN, MO, MS, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI.
3. The 2010 SO_2 emissions cap applies to years 2010 through 2014. The 2009 NO_X emissions cap applies to years 2009 through 2014. The 2015 caps apply to 2015 and beyond.
4. Due to the use of the existing bank of SO_2 allowances, the estimated SO_2 emissions in the CAIR region in 2010 and 2015 are higher than the emissions caps.
5. Over time the banked SO_2 emissions allowances will be consumed and the 2015 cap level will be reached. SO_2 emissions levels can be thought of as on a flexible "glide path" to meet the 2015 CAIR cap with increasing reductions over time. The annual SO_2 emissions levels in 2020 with CAIR are forecasted to be 3.3 million tons within the region encompassing States required to make annual reductions, an annual reduction of 4.4 million tons from base case levels.

TABLE IV–15.—FINAL RULE NO_X OZONE SEASON BASE CASE EMISSIONS, EMISSIONS CAPS, EMISSIONS AFTER CAIR AND EMISSION REDUCTIONS IN THE REGION REQUIRED TO MAKE OZONE SEASON NO_X REDUCTIONS (25 STATES AND DC) FOR THE INTERIM PHASE (2009) AND FINAL PHASE (2015) FOR ELECTRIC GENERATION UNITS

(Million Tons) [85]

	Ozone Season NO_X			
Phase	Base case emissions	CAIR emissions caps	Emissions after CAIR	Emissions reduced
2009	0.7	0.6	0.6	0.1
2015	0.7	0.5	0.5	0.2

Notes:

1. The emission caps that EPA used to make its determination of highly cost-effective controls and the emission reductions associated with those caps are shown in Table IV–15. For a discussion of the emission reduction requirements if States control source categories other than EGUs, see section VII in this preamble. Emissions shown here are for EGUs with capacity greater than 25 MW.
2. The District of Columbia and the following 25 States are affected by CAIR for ozone season NO_X controls: AL, AR, CT, DE, FL, IA, IL, IN, KY, LA, MA, MD, MI, MO, MS, NJ, NY, NC, OH, PA, SC, TN, VA, WV, WI.
3. The 2009 NO_X emissions cap applies to years 2009 through 2014. The 2015 cap applies to 2015 and beyond.

Table IV–16 shows the estimated amounts of regionwide annual SO_2 and NO_X emissions reductions that would occur if EPA finalizes its proposal to find that Delaware and New Jersey contribute significantly to downwind $PM_{2.5}$ nonattainment, and if all affected States choose to control EGUs (the proposal is published in the "Proposed Rules" section of today's action). In that case, the estimated regionwide annual SO_2 and NO_X emissions caps that would apply for EGUs are as shown in Table IV–16. Annual base case emissions levels for EGUs in the CAIR region (including Delaware and New Jersey) as well as emissions with CAIR are also shown in the Table, based on IPM modeling. If EPA finalizes its proposal to include Delaware and New Jersey for $PM_{2.5}$ requirements, then the ozone

[84] Table IV–14 includes regionwide information for the 23 States and DC that are required by CAIR to make annual emission reductions. It does not include information for the 5 CAIR States that are required to make ozone season reductions only. The CAIR requires NO_X emission reductions in a total of 28 States and DC. For 20 States and DC, both annual and ozone season NO_X reductions are required. For 3 States only annual reductions are required, and for 5 States only ozone season reductions are required. The total projected NO_X emission reductions that will result from CAIR—if all States control EGUs—include the annual reductions shown in Table IV–14 (for 23 States and DC) plus the ozone season reductions in the 5 States required to make ozone season reductions only. The EPA projects the total NO_X reductions, in all 28 CAIR States and DC, to be 1.2 million tons in 2009 and 1.5 million tons in 2015. Note that the values in this table represent the final CAIR policy and differ slightly from the values in the RIA (which were based on an earlier and slightly different IPM) (see more detailed discussion both earlier in this section and in the RIA).

[85] Table IV–15 shows regionwide information for the 25 States and DC that are required to make ozone season emission reductions under CAIR. It does not include information for the 3 States that are required to make annual emission reductions only.

season requirements would not change for States required to make ozone season reductions for CAIR.

Based on EPA modeling with Delaware and New Jersey included in the $PM_{2.5}$ region (and if all affected States choose to control EGUs), the EGU emissions caps and the ozone season NO_X emissions and emission reductions associated with those caps, for the 25 States and the District of Columbia that are required to make ozone season NO_X reductions, would be as shown in Table IV–15, above.[86]

TABLE IV–16.—SO_2 AND NO_X ANNUAL BASE CASE EMISSIONS, EMISSIONS CAPS, EMISSIONS AFTER CAIR AND EMISSION REDUCTIONS IN THE REGION REQUIRED TO MAKE ANNUAL SO_2 AND NO_X REDUCTIONS (25 STATES AND DC) FOR THE INITIAL PHASE (2010 FOR SO_2 AND 2009 FOR NO_X) AND FINAL PHASE (2015 FOR SO_2 AND NO_X) FOR ELECTRIC GENERATION UNITS IF EPA FINALIZES ITS PROPOSAL TO INCLUDE DELAWARE AND NEW JERSEY FOR $PM_{2.5}$ REQUIREMENTS

[Million tons][87]

	First phase (2010 for SO_2 and 2009 for NO_X)			
	Base case emissions	CAIR emissions caps	Emissions after CAIR	Emissions reduced
SO_2	8.8	3.7	5.2	3.6
NO_X	2.8	1.5	1.5	1.2
Sum	11.5	NA	6.7	4.8
	Second phase (2015 for SO_2 and NO_X)			
	Base case emissions	CAIR emissions caps	Emissions after CAIR	Emissions reduced
SO_2	7.9	2.6	4.1	3.9
NO_X	2.8	1.3	1.3	1.5
Sum	10.7	NA	5.3	5.4

Note: Numbers may not add due to rounding.

[1] The emission caps that EPA used to make its determination of highly cost-effective controls and the emission reductions associated with those caps are shown in Table IV–16. For a discussion of the emission reduction requirements if States control source categories other than EGUs, see section VII in this preamble. Emissions shown here are for EGUs with capacity greater than 25 MW.

[2] The District of Columbia and the following 25 States would be affected by CAIR for annual SO_2 and NO_X controls if EPA finalizes its proposal to include DE and NJ: AL, DE, FL, GA, IA, IL, IN, KY, LA, MD, MI, MN, MO, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI.

[3] The 2010 SO_2 emissions cap would apply to years 2010 through 2014. The 2009 NO_X emissions cap would apply to years 2009 through 2014. The 2015 caps would apply to 2015 and beyond.

[4] Due to the use of the existing bank of SO_2 allowances, the estimated SO_2 emissions in the CAIR region in 2010 and 2015 would be higher than the emissions caps.

[5] Over time the banked SO_2 emissions allowances would be consumed and the 2015 cap level would be reached. SO_2 emissions levels can be thought of as on a flexible "glide path" to meet the 2015 CAIR cap with increasing reductions over time. The annual SO_2 emissions levels in 2020 with CAIR, within the region of States required to make annual reductions (including Delaware and New Jersey), are forecasted to be 3.3 million tons, an annual reduction of 4.4 million tons from base case levels.

The EPA apportioned the EGU caps—and associated required regionwide emission reductions—on a State-by-State basis. The affected States may determine the necessary controls on SO_2 and NO_X emissions to achieve the required reductions. The EPA's apportionment method and the resulting State EGU emissions budgets are described in Section V in today's preamble.

To achieve the required SO_2 and NO_X reductions in the most cost-effective manner, EPA suggests that States implement these reductions by controlling EGUs under a cap and trade program that EPA would implement.

However, the States have flexibility in choosing the sources that must reduce emissions. If the States choose to require EGUs to reduce their emissions, then States must impose a cap on EGU emissions, which would in effect be an annual emissions budget. Provisions for allocating SO_2 and NO_X allowances to individual EGUs—which apply if a State chooses to control EGUs and elects to allow them to participate in the interstate cap and trade program—are presented elsewhere in today's preamble. If a State wants to control EGUs, but does not want to allow EGUs to participate in the interstate cap and trade program, the State has flexibility in allocating allowances, but it must cap EGUs. Sources that are subject to the emission reduction requirements under title IV continue to be subject to those requirements.

If the States choose to control other sources, then they must employ methods to assure that those other sources implement controls that will yield the appropriate amount of annual emissions reduction. See section VII (SIP Criteria and Emissions Reporting Requirements) in today's preamble.

Implementation of the cap and trade program is discussed in section VIII in today's preamble.

For convenience, we use specific terminology to refer to certain concepts. "State budget" refers to the statewide

[86] For a discussion of the emission reduction requirements if States choose to control sources other than EGUs, see section VII of this preamble.

[87] Table IV–16 includes regionwide information for the 25 States and DC that will be required to make annual emission reductions if EPA finalizes its proposal to require annual reductions in Delaware and New Jersey under CAIR. The table does not include information for the 3 States (Arkansas, Connecticut, and Massachusetts) that would be affected by CAIR for ozone season reductions only.

emissions that may be used as an accounting technique to determine the amount of annual or ozone season emissions reductions that controls may yield. It does not imply that there is a legally enforceable statewide cap on emissions from all SO_2 or NO_X sources. "Regionwide budget" refers to the amount of emissions, computed on a regionwide basis, which may be used to determine State-by-State requirements. It does not imply that there is a legally enforceable regionwide cap on emissions from all SO_2 or NO_X sources. "State EGU budget" refers to the legally enforceable annual or ozone season emissions cap on EGUs a State would apply should it decide to control EGUs.

V. Determination of State Emissions Budgets

The EPA outlined in the NPR and SNPR its proposals regarding a methodology for setting both regional and State-level SO_2 and NO_X budgets. Section IV explains how the regionwide budgets were developed. This section V describes how EPA apportions the regionwide emissions reductions—and the associated EGU caps—on a State-by-State basis, so that the affected States may determine the necessary controls of SO_2 and NO_X emissions.

In the NPR and SNPR, EPA proposed annual SO_2 and NO_X caps for States contributing to fine particle nonattainment and separate ozone-season only caps for States contributing to ozone—but not fine particle—nonattainment. The EPA is finalizing an annual cap for both SO_2 and NO_X for States that contribute to fine particle nonattainment. In addition, EPA is finalizing an ozone-season only cap for NO_X for all States that contribute to ozone nonattainment.

States have several options for reducing emissions that significantly contribute to downwind nonattainment. They can adopt EPA's approach of reducing the emissions in a cost-effective manner through an interstate cap and trade program. This approach would, by definition, achieve the required cost-effective reductions. Alternately, States could achieve all of the necessary emissions reductions from EGUs, but choose not to use EPA's interstate emissions trading program. In this case, a State would need to demonstrate that it is meeting the EGU budgets outlined in this section. Finally, States could obtain at least some of their required emissions reductions from sources other than EGUs. Additional detail on these options is provided in section VII.

A. What Is the Approach for Setting State-by-State Annual Emissions Reductions Requirements and EGU Budgets?

This section presents the final methodologies used for apportioning regionwide emission reduction requirements or budgets to the individual States.

In the CAIR NPR, EPA proposed methods for determining the SO_2 and NO_X emission reduction requirements or budgets for each affected State. In the June 2004 SNPR, EPA proposed corrections and improvements to the proposals in the CAIR NPR. In the August 2004 NODA, EPA presented the corrected NO_X budgets resulting from the improvements proposed in the SNPR.

1. SO_2 Emissions Budgets

a. State Annual SO_2 Emission Budget Methodology

As noted elsewhere in today's preamble, the regionwide annual budget for 2015 and beyond is based on a 65 percent reduction of title IV allowances allocated to units in the CAIR States for SO_2 control. The regionwide annual SO_2 budget for the years 2010–2014 is based on a 50 percent reduction from title IV allocations for all units in affected States.

In the NPR and SNPR, EPA also proposed calculating annual State SO_2 budgets based on each State's allowances under title IV of the 1990 CAA Amendments. We are finalizing this proposed approach for determining State annual SO_2 budgets.

State annual budgets for the years 2010–2014 (Phase I) are based on a 50 percent reduction from title IV allocations for all units in the affected State. The State annual budget for 2015 and beyond (Phase II) is based on a 65 percent reduction of title IV allowances allocated to units in the affected State for SO_2 control.

Some commenters criticized EPA's basing State budgets on title IV allocations since these were based largely on 1985–1987 historic heat input data. Commenters argue that the initial allocation was not equitable and that in any event, the electric power sector has changed significantly. They conclude that State budgets should reflect those differences. Commenters have also commented that tying SO_2 allocations to title IV also does not let States account for units that are exempt from title IV or for new units that have come online since 1990.

While acknowledging these concerns, EPA believes, for a number of reasons, that setting State budgets according to title IV allowances represents a reasonable approach.

The EPA believes that basing budgets on title IV allowances is necessary in order to ensure the preservation of a viable title IV program, which is important for reasons discussed in section IX of this preamble. Such reasons include the desire to maintain the trust and confidence that has developed in the functioning market for title IV allowances. The EPA believes it is important not to undermine such confidence (which is an essential underpinning to a viable market-based system) recognizing that it is a key to the success of a trading program under the CAIR.

The title IV program represents a logical starting point for assessing emissions reductions for SO_2, since it is the current effective cap on SO_2 emissions for Acid Rain units, which make up the large majority of affected EGU CAIR units. It is from this starting emissions cap, that further CAIR reductions are required. Consequently, EPA proposes State-level reductions based on reductions from the initial allocations of title IV allowances to individual units at sources (power plants) in States covered by the CAIR.

The setting of SO_2 budgets differs from the setting of NO_X budgets for the CAIR, in part, because of this difference in starting points—since there is no existing NO_X regional annual cap, and no currency for emissions, on which sources rely. Furthermore, Congress, as part of title IV of the CAA, decided upon the allocations of title IV allowances specifically for the control of SO_2, and not for NO_X.

Moreover, Congress decided to allocate title IV allowances in perpetuity, realizing that the electricity sector would not remain static over this time period. Congress clearly did not choose a policy to regularly revisit and revise these allocations, believing that its allocations methodology for title IV allowances would be appropriate for future time periods.

The EPA realizes, putting aside concerns of linkage to title IV, that there are numerous potential methodologies of dividing up the regional budgets among the States. Also, EPA believes, that while initial allocations of State budgets are important for distributional reasons, under a cap and trade system, they would not impact the attainment of the environmental objectives or the overall cost of this rule.

Each of the alternate methods also has certain shortcomings, many of which have been identified by commenters. Basing allowances on historic emissions, for instance, would penalize

States that have already gone through significant efforts to clean up their sources. Basing allowances on heat input has advantages, but cannot accommodate States that have worked to improve their energy efficiency. Basing allowances on output would provide gas-fired units with many more allowances than they need, rather than giving them to the coal-fired units that will be incurring the greatest costs from the tighter caps.

The EPA did look at a number of allowance outcomes using alternate potential methods for allocating SO_2 allowances. These methods included allocating on the basis of historic emissions, heat input (with alternatives based on heat input from all fossil generation, and heat input from coal- and oil-fired generation only) and output (with alternatives based on all generation and all fossil-fired generation). Allocating allowances based on title IV yields results that fall within a reasonable range of results obtained from using these alternate methodologies. In fact, calculating State budgets using title IV allowances yields budgets generally at or within the ranges of budgets calculated using the other methods in more than two-thirds of the States, which account for over 85 percent of the total heat input in the region from 1999–2002. This analysis is discussed further in the response to comments document.

b. Final SO_2 State Emission Budget Methodology

The EPA is finalizing the budgets as noted in the SNPR, adjusting for the proper inclusion of States covered under the final CAIR. The final State budgets are included in Table V–1 below. Details of the data and methodology used to calculate these budgets are included in the accompanying "Regional and State SO_2 and NO_X Emissions Budgets" Technical Support Document.

TABLE V–1.—FINAL ANNUAL ELECTRIC GENERATING UNITS SO_2 BUDGETS

[Tons]

State	State SO_2 budget 2010*	State SO_2 budget 2015**
Alabama	157,582	110,307
District of Columbia	708	495
Florida	253,450	177,415
Georgia	213,057	149,140
Illinois	192,671	134,869
Indiana	254,599	178,219
Iowa	64,095	44,866
Kentucky	188,773	132,141
Louisiana	59,948	41,963
Maryland	70,697	49,488
Michigan	178,605	125,024
Minnesota	49,987	34,991
Mississippi	33,763	23,634
Missouri	137,214	96,050
New York	135,139	94,597
North Carolina	137,342	96,139
Ohio	333,520	233,464
Pennsylvania	275,990	193,193
South Carolina	57,271	40,089
Tennessee	137,216	96,051
Texas	320,946	224,662
Virginia	63,478	44,435
West Virginia	215,881	151,117
Wisconsin	87,264	61,085
Total	3,619,196	2,533,434

*Annual budget for SO_2 tons covered by allowances for 2010–2014.

**Annual budget for SO_2 tons covered by allowances for 2015 and thereafter.

c. Use of SO_2 Budgets

These specific levels of the proposed State budgets would actually provide binding statewide caps on EGU emissions for States that choose to control only EGUs but do not want to participate in the trading program. For States choosing to participate in the trading program, these State budgets would not be binding, instead, the States' SO_2 reductions would be achieved solely through the application of required retirement ratios as discussed in section VII of this preamble. For States controlling both EGUs and non-EGUs (or controlling only non-EGUs), these State budgets would be used to calculate the emissions reductions requirements for non-EGUs and the remaining reduction requirement for EGUs. This is described in more detail in the section VII discussion on SIP approvability.

2. NO_X Annual Emissions Budgets

a. Overview

In this section, EPA discusses the apportioning of regionwide NO_X annual emission reduction requirements or budgets to the individual States. In the January 2004 proposal, we proposed State EGU annual NO_X budgets based on each State's average share of recent historic heat input. In the SNPR, we proposed the same input-based methodology, but revised the budgets based on more complete heat input data. Also, EPA took comment on an alternative methodology that determines State budgets by multiplying heat input data by adjustment factors for different fuels. In the August NODA, EPA presented the corrected annual NO_X budgets resulting from the improved methodology proposed in the SNPR.

b. State Annual NO_X Emissions Budget Methodology

Proposed and Discussed NO_X Emission Budget Methodology

As noted elsewhere in today's preamble, EPA determined historical annual heat input data for Acid Rain Program units in the applicable States and multiplied by 0.15 lb/mmBtu (for 2009) and 0.125 lb/mmBtu (for 2015) to determine total annual NO_X regionwide budgets for the CAIR region. The EPA applied these rates to each individual State's total highest annual heat input for any year from 1999 through 2002. Thus, EPA used the heat input total for the year in which a State's total heat input was the highest.

In the January 2004 proposal, we proposed annual NO_X State budgets for a 28-State (and D.C.) region based on each jurisdiction's average heat input—using heat input data from Acid Rain Program units—over the years 1999 through 2002. We summed the average heat input from each of the applicable jurisdictions to obtain a regional total average annual heat input. Then, each State received a pro rata share of the regional NO_X emissions budget based on the ratio of its average annual heat input to the regional total average annual heat input.

In the SNPR, EPA proposed to revise its determination of State NO_X budgets by supplementing Acid Rain Program unit data with annual heat input data from the U.S. Energy Information Administration (EIA), for the non-Acid Rain unit data. A number of commenters had suggested that this would better reflect the heat input of the units that will be controlled under the CAIR, and EPA agrees.

In the SNPR, EPA asked for, and subsequently received, comments on determining State budgets by multiplying heat input data by adjustment factors for different fuels. The factors would reflect the inherently higher emissions rate of coal-fired units, and consequently the greater burden on coal units to control emissions.

Today's Rule

As noted earlier in the case of SO_2, EPA recognizes that the choice of method in setting State budgets, with a given regionwide total annual budget, makes little difference in terms of the levels of resulting regionwide annual

SO_2 and NO_X emissions reductions. If States choose to control EGUs and participate in the cap and trade program, allowances could be freely traded, encouraging least-cost compliance over the entire region. In such a case, the least-cost outcome would not depend on the relative levels of individual State budgets.

A number of commenters have stated, without supporting analysis or evidence, that budgets based on heat input, (and particularly those that would use different fuel factors) do not encourage efficiency. Economic theory indicates that neither a heat input, nor an output-based approach, if allocated once and based on a historical baseline, would provide any incentives for more or less efficient generation (changes in future behavior would have no impact on allocations). The cap and trade system itself, regardless of how the allowances are distributed, provides the primary incentive for more efficient, cleaner generation of electricity.

The EPA is finalizing an approach of calculating State budgets through a fuel-adjusted heat-input basis. State budgets would be determined by multiplying historic heat input data (summed by fuel) by different adjustment factors for the different fuels. These factors reflect for each fuel (coal, gas and oil), the 1999–2002 average emissions by State, summed for the CAIR region, divided by average heat input by fuel by State, summed for the CAIR region. The resulting adjustment factors from this calculation are 1.0 for coal, 0.4 for gas and 0.6 for oil. The factors would reflect the inherently higher emissions rate of coal-fired plants, and consequently the greater burden on coal plants to control emissions.

Such an approach provides States with allowances more in proportion with their historical emissions. It provides for a more equitable budget distribution by recognizing that different States are facing the reduction requirements with different starting stocks of generation, with different starting emission profiles.[88] The fuel burned is a key factor in differentiating the generation.

However, this approach is not equivalent to an approach based strictly on historical emissions (which would give fewer allowances to States which have already cleaned up their coal plants). Under the approach we are finalizing today, heat input from all coal, whether clean or uncontrolled, would be counted equally in determining State budgets. Likewise, all heat input from gas, whether clean or uncontrolled, from a steam-gas unit or from a combined-cycle plant, would be counted equally in determining State budgets.

It is not expected that this decision would disadvantage States with significant gas-fired generation. One reason is that the calculation of the adjusted heat input for natural gas generation generally includes significant historic heat input and emissions from older, less efficient and dirtier steam gas units. These units' capacity factors are declining and are expected to decline further over time as new, cleaner and more efficient combined-cycle gas units increase their generation.

It is important to note that the methodology by which the NO_X State budgets are determined need not be used by individual States in determining allocations to specific sources. As discussed in section VIII of this document (Model Trading Rule), EPA is offering States the flexibility to allocate allowances from their budgets as they see fit.

Finally, EPA discussed in the January 2004 proposal, a methodology used in the NO_X SIP Call (67 FR 21868) that applied State-specific growth rates for heat input in setting State budgets.[89] The EPA, in the SNPR, noted that it is not proposing to use this method for the CAIR because we believe that other methods are reasonable, and that methods involving State-specific growth rates present certain challenges due to the inherent difficulties in predicting State-specific growth in heat input over a lengthy period, especially for jurisdictions that are only a part of a larger regional electric power dispatch region. Several commenters stated their support for incorporating growth, believing that not taking growth into account would penalize States with higher growth. However, a significant number of commenters stated their opposition to using growth in setting State budgets, noting the problems that arose in the NO_X SIP Call. The EPA believes that setting budgets using a heat input approach, without a growth adjustment, is fair, would be simpler and would involve less risk of resulting litigation.

c. Final Annual State NO_X Emission Budgets

The final annual State NO_X emission budgets following this method are included in Table V–2 below. Details of the numbers and methodology used to calculate these budgets are included in the "Regional and State SO_2 and NO_X Emissions Budgets" Technical Support Document.

TABLE V–2.—FINAL ANNUAL ELECTRIC GENERATING UNITS NO_X BUDGETS

[Tons]

State	State NO_X budget 2009*	State NO_X budget 2015**
Alabama	69,020	57,517
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966
Total	1,504,871	1,254,061

*Annual budget for NO_X tons covered by allowances for 2009–2014.

**Annual budget for NO_X tons covered by allowances for 2015 and thereafter.

d. Use of Annual NO_X Budgets

These proposed State budgets would serve as effective binding caps on State emissions, if States chose to control only EGUs, but did not want to participate in the trading program. For States controlling both EGUs and non-EGUs (or controlling only non-EGUs), these budgets would be compared to a baseline level of emissions to calculate the emissions reductions requirements for non-EGUs and the required caps for EGUs. This process is described in more detail in the section VII discussion on SIP approvability.

e. NO_X Compliance Supplement Pool

As is discussed in section I, EPA is establishing a NO_X compliance supplement pool of 198,494 tons, which would result in a total compliance supplement pool of approximately 200,000 tons of NO_X when combined with EPA's proposed rulemaking to include Delaware and New Jersey. The

[88] States receiving larger budgets under this approach are generally expected to be those having to make the most reductions.

[89] With a methodology similar to that used in the NO_X SIP Call, annual State NO_X budgets would be set by using a base heat input data, then adjusting it by a calculated growth rate for each jurisdiction's annual EGU heat inputs.

EPA is apportioning the compliance supplement pool to States based on the assumption that a State's need for allowances from the pool is proportional to the magnitude of the State's required emissions reductions (as calculated using the State's base case emissions and annual NO_X budget). The EPA is apportioning the 200,000 tons of NO_X on a pro-rata basis, based on each State's share of the total emissions reductions requirement for the region in 2009. This is consistent with the methodology used in the NO_X SIP Call. Table V–3 presents each State's compliance supplement pool.

TABLE V–3.—STATE NO_X COMPLIANCE SUPPLEMENT POOLS

[Tons]

State	Base case 2009 emissions	2009 State annual NO_X budget	Reduction requirement	Compliance supplement pool *
Alabama	132,019	69,020	62,999	10,166
District of Columbia	0	144	0	0
Florida	151,094	99,445	51,649	8,335
Georgia	143,140	66,321	76,819	12,397
Illinois	146,248	76,230	70,018	11,299
Indiana	233,833	108,935	124,898	20,155
Iowa	75,934	32,692	43,242	6,978
Kentucky	175,754	83,205	92,549	14,935
Louisiana	49,460	35,512	13,948	2,251
Maryland	56,662	27,724	28,938	4,670
Michigan	117,031	65,304	51,727	8,347
Minnesota	71,896	31,443	40,453	6,528
Mississippi	36,807	17,807	19,000	3,066
Missouri	115,916	59,871	56,045	9,044
New York	45,145	45,617	0	0
North Carolina	59,751	62,183	0	0
Ohio	263,814	108,667	155,147	25,037
Pennsylvania	198,255	99,049	99,206	16,009
South Carolina	48,776	32,662	16,114	2,600
Tennessee	106,398	50,973	55,425	8,944
Texas	185,798	181,014	4,784	772
Virginia	67,890	36,074	31,816	5,134
West Virginia	179,125	74,220	104,905	16,929
Wisconsin	71,112	40,759	30,353	4,898
CAIR region subtotal	.....	.....	.....	198,494
Delaware	9,389	4,166	5,223	843
New Jersey	16,760	12,670	4,090	660
Total	.....	.....	.....	199,997

* Rounding to the nearest whole allowance results in a total compliance supplement pool of 199,997 tons.

B. What Is the Approach for Setting State-by-State Emissions Reductions Requirements and EGU Budgets for States With NO_X Ozone Season Reduction Requirements?

1. States Subject to Ozone-Season Requirements

In the NPR, EPA proposed that Connecticut contributes significantly to ozone nonattainment in another State, but not to fine particle nonattainment. As a result of subsequent air quality modeling, EPA has also found that Massachusetts, New Jersey, Delaware and Arkansas contribute significantly to ozone nonattainment in another State, but not to fine particle nonattainment. In this final rule, EPA is establishing a regionwide ozone-season budget for all States that contribute significantly to ozone nonattainment in another State, regardless of their contribution to fine particle nonattainment. The following 25 States, plus the District of Columbia, are found to contribute significantly to ozone nonattainment: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

These States are subject to an ozone season NO_X cap, which covers the 5 months of May through September. The EPA is calculating the ozone season cap level for the 25 States plus the District of Columbia region by multiplying the region's ozone season heat input by 0.15 lb/mmBtu for 2009 and 0.125 lb/mmBtu for 2015. Heat input for the region was estimated by looking at reported ozone season Acid Rain heat inputs for each State for the years 1999 through 2002, and selecting the single year highest heat input for each State as a whole.

As is the case for the annual NO_X State Budgets, EPA is finalizing an approach of calculating ozone season NO_X State budgets through a fuel-adjusted heat input basis. State budgets would be determined by multiplying State-level average historic ozone-season heat input data (summed by fuel) by different adjustment factors for the different fuels (1.0 for coal, 0.4 for gas, and 0.6 for oil). The total ozone season State budgets are then determined by calculating each State's share of total fuel-adjusted heat input, and multiplying this share by the regionwide budget.

The budgets for these States in 2009 and 2015 are included in Table V–4 below.

TABLE V–4.—FINAL SEASONAL ELECTRICITY GENERATING UNIT NO_X BUDGETS

[Tons]

State	State NO_X budget 2009 *	State NO_X budget 2015 **
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989
Total	567,744	484,506

* Seasonal budget for NO_X tons covered by allowances for 2009–2014. For States that have lower EGU budgets under the NO_X SIP Call than their 2009 CAIR budget, table V–4 includes their SIP Call budget. For Connecticut, the NO_X SIP Call budget is also used for 2015 and beyond.

** Seasonal budget for NO_X tons covered by allowances for 2015 and thereafter.

VI. Air Quality Modeling Approach and Results

Overview

In this section we summarize the air quality modeling approach used for the proposed rule, we address major comments on the fundamental aspects of EPA's proposed approach, and we describe the updated and improved approach, based on those comments, that we are finalizing today. This section also contains the results of EPA's final air quality modeling, including: (1) Identifying the future baseline $PM_{2.5}$ and 8-hour ozone nonattainment counties in the East; (2) quantifying the contribution from emissions in upwind States to nonattainment in these counties; (3) quantifying the air quality impacts of the CAIR reductions on $PM_{2.5}$ and 8-hour ozone; and (4) describing the impacts on visibility in Class I areas of implementing CAIR compared to implementing the regional haze requirement for best available retrofit technology (BART).

We present the air quality models, model configuration, and evaluation; and then the emissions inventories and meteorological data used as inputs to the air quality models. Next, we provide the updated interstate contributions for $PM_{2.5}$ and 8-hour ozone and those States that make a significant contribution to downwind nonattainment, before considering cost. Finally, we present the estimated impacts of the CAIR emissions reductions on air quality and visibility. As described below, our air quality modeling for today's rule utilizes the Community Multiscale Air Quality (CMAQ) model in conjunction with 2001 meteorological data for simulating $PM_{2.5}$ concentrations and associated visibility effects and the Comprehensive Air Quality Model with Extensions (CAMx) with meteorological data for three episodes in 1995 for simulating 8-hour ozone concentrations. Our approach to modeling both $PM_{2.5}$ and 8-hour ozone involves applying these tools (*i.e.*, CMAQ for $PM_{2.5}$ and CAMx for 8-hour ozone) using updated emissions inventory data for 2001, 2010, and 2015 to project future baseline concentrations, interstate transport, and the impacts of CAIR on projected nonattainment of $PM_{2.5}$ and 8-hour ozone. We provide additional information on the development of our updated CAIR air quality modeling platform, the modeling analysis techniques, model evaluation, and results for $PM_{2.5}$ and 8-hour ozone modeling in the CAIR Notice of Final Rulemaking Emissions Inventory Technical Support Document (NFR EITSD) and the Air Quality Modeling Technical Support Document (NFR AQMTSD).

A. What Air Quality Modeling Platform Did EPA Use?

1. Air Quality Models

a. The $PM_{2.5}$ Air Quality Model and Evaluation

Overview

In the NPR, we used the Regional Model for Simulating Aerosols and Deposition (REMSAD) as the tool for simulating base year and future concentrations of $PM_{2.5}$. Like most photochemical grid models, the predictions of REMSAD are based on a set of atmospheric specie mass continuity equations. This set of equations represents a mass balance in which all of the relevant emissions, transport, diffusion, chemical reactions, and removal processes are expressed in mathematical terms. The modeling domain used for this analysis covers the entire continental United States and adjacent portions of Canada and Mexico.

The EPA applied REMSAD for an annual simulation using meteorology and emissions for 1996. We used the results of this 1996 Base Year model run to evaluate how well the modeling system (*i.e.*, the air quality model and input data sets) replicated measured data over the time period and domain simulated. We performed a model evaluation for $PM_{2.5}$ and speciated components (*e.g.*, sulfate, nitrate, elemental carbon, organic carbon, etc.) as well as nitrate, sulfate and ammonium wet deposition, and visibility. The evaluation used available 1996 ambient measurements paired with REMSAD predictions corresponding to the location and time periods of the measured data. We quantified model performance using various statistical and graphical techniques. Additional information on the model evaluation procedures and results are included in the Notice of Proposed Rulemaking Air Quality Modeling Technical Support Document (NPR AQMTSD).

The EPA received numerous comments on various elements of the proposed $PM_{2.5}$ air quality modeling approach. The major comments are responded to below. Other comments are addressed the Response to Comment (RTC) document. Regarding REMSAD, commenters argued that: (1) The REMSAD model is an inappropriate tool for modeling $PM_{2.5}$; (2) the scientific formulation of the model is simplistic and outdated and that other models with better science are available and should be used; and (3) results from REMSAD are directionally correct but better tools should be used as the basis for the final determinations on transport and projected nonattainment.

We agree that models with more refined science are available for $PM_{2.5}$ modeling and we have selected one of these models, the CMAQ as the tool for $PM_{2.5}$ modeling for the final CAIR. The CMAQ model is a publicly available, peer-reviewed, state-of-the-science model with a number of science attributes that are critical for accurately simulating the oxidant precursors and non-linear organic and inorganic chemical relationships associated with the formation of sulfate, nitrate, and organic aerosols. Several of the important science aspects of CMAQ that are superior to REMSAD include: (1) Updated gaseous/heterogeneous chemistry that provides the basis for the formation of nitrates and includes a

current inorganic nitrate partitioning module; (2) in-cloud sulfate chemistry, which accounts for the non-linear sensitivity of sulfate formation to varying pH; (3) a state-of-the-science secondary organic aerosol module that includes a more comprehensive gas-particle partitioning algorithm from both anthropogenic and biogenic secondary organic aerosol; and (4) the full CB–IV chemistry mechanism, which provides a complete simulation of aerosol precursor oxidants.

However, even though REMSAD does not have all the scientific refinements of CMAQ, we believe that REMSAD treats the key physical and chemical processes associated with secondary aerosol formation and transport. Thus, we believe that the conclusions based on the proposal modeling using REMSAD are valid and therefore support today's findings based only on CMAQ that: (1) There will be widespread $PM_{2.5}$ nonattainment in the eastern U.S. in 2010 and 2015 absent the reductions from CAIR; (2) upwind States in the eastern part of the United States contribute to the $PM_{2.5}$ nonattainment problems in other downwind States; (3) States with high emissions tend to contribute more than States with low emissions; (4) States close to nonattainment areas tend to contribute more than other States farther upwind; and (5) the CAIR controls will produce major benefits in terms of bringing areas into or closer to attainment.

Comments and Responses

(i) REMSAD Science and Evaluation

Comment: Some commenters stated that REMSAD is an inappropriate model for use in simulating $PM_{2.5}$. Other commenters said, more specifically, that the chemical mechanism in REMSAD (*i.e.*, micro CB–IV) is simplified and not validated, and that the model has not been scientifically peer-reviewed.

Response: The EPA disagrees with comments claiming that REMSAD is an inappropriate tool for modeling $PM_{2.5}$. The EPA believes that REMSAD is appropriate for regional and national modeling applications because the model does include the key physical and chemical processes associated with secondary aerosol formation and transport.[90]

Specifically, REMSAD simulates both gas phase and aerosol chemistry. The gas phase chemistry uses a reduced-form version of Carbon Bond chemical mechanism (micro-CB–IV). Formation of inorganic secondary particulate species, such as sulfate and nitrate, are simulated through chemical reactions within the model. Aerosol sulfate is formed in both the gas phase and the aqueous phase. The REMSAD model also accounts for the production of secondary organic aerosols through chemistry processes involving volatile organic compounds (VOC) and directly emitted organic particles. Emissions of non-reactive particles (*e.g.*, elemental carbon) are treated as inert species which are advected and deposited during the simulation.

With regard to comments on the micro CB–IV chemical mechanism, although this mechanism treats fewer organic carbon species compared to the full CB–IV, the inorganic portion of the reduced mechanism is identical to the full chemical mechanism. The intent of the CB–IV mechanism is to: (a) Provide a faithful representation of the linkages between emissions of ozone precursor species and secondary aerosol precursor species; (b) treat the oxidizing capacity of the troposphere, represented primarily by the concentrations of radicals and hydrogen peroxide; and (c) simulate the rate of oxidation of the nitrogen oxide (NO_X) and sulfur dioxide (SO_2), which are precursors to secondary aerosols. The EPA agrees that micro CB–IV is simplified compared to the full CB–IV mechanism. However, performance testing of micro CB–IV indicates that this simplified mechanism is similar to the full CB–IV chemical mechanism in simulating ozone formation and approximates other species reasonably well (*e.g.*, hydroxyl radical, hydroperoxy radical, the operator radical, hydrogen peroxide, nitric acid, and peroxyacetyl nitrate).[91]

The REMSAD model was subjected to a scientific peer-review (Seigneur *et al.*, 1999) and EPA has incorporated the major science improvements that were recommended by the peer-review panel. These improvements were included in the version of REMSAD used for the NPR modeling. Specifically, the following updates have been implemented into REMSAD Version 7.06, which was used for the proposed CAIR control strategy simulations: (1) The nighttime chemistry treatment was updated to improve the treatment of the gas phase species NO_3 and N_2O_5; (2) the effects of temperature and pressure dependence on chemical rates were added; (3) the MARS–A aerosol partitioning module was added for calculating particle and gas phase fractions of nitrate; (4) aqueous phase formation of sulfate was updated by including reactions for oxidation of SO_2 by ozone and oxygen, (5) peroxynitric acid (PNA) chemistry was added; and (6) a module for calculating biogenic and anthropogenic secondary organic aerosols was developed and integrated into REMSAD. We believe that these changes adequately respond to the peer review comments and have bolstered the scientific credibility of this model.

(ii) Use of CMAQ Instead of REMSAD for $PM_{2.5}$ Modeling

Comment: Some commenters claimed that REMSAD is outdated and that other models with more sophisticated science are available. Commenters said that EPA should utilize the best available science through use of the most comprehensive photochemical model for simulating aerosols. Commenters specifically stated that EPA should use more recently developed models such as the CMAQ model or the aerosol version of the Comprehensive Air Quality Model with Extensions (CAM_X–PM).

Response: The EPA agrees that photochemical models are now available that are more scientifically sophisticated than REMSAD. In this regard, and in response to commenters' recommendations on specific models, EPA has selected CMAQ as the modeling tool for the final CAIR modeling analysis. As stated above, the CMAQ model is a publicaly available, peer-reviewed, state-of-the-science model with a number of science attributes that are critical for accurately simulating the oxidant precursors and non-linear organic and inorganic chemical relationships associated with the formation of sulfate, nitrate, and organic aerosols. As listed above, the important science aspects of CMAQ that are superior to REMSAD include: (1) Updated gaseous/heterogeneous chemistry that provides the basis for the formation of nitrates and includes a current inorganic nitrate partitioning module; (2) in-cloud sulfate chemistry, which accounts for the non-linear sensitivity of sulfate formation to varying pH; (3) a state-of-the-science secondary organic aerosol module that includes a more comprehensive gas-particle partitioning algorithm from both anthropogenic and biogenic secondary organic aerosol; and (4) the full CB–IV chemistry mechanism, which provides a complete simulation of aerosol precursor oxidants.

(iii) Model Evaluation

Comment: A number of commenters claimed that EPA's air quality model evaluation for 1996 was deficient because it lacked sufficient ambient measurements, especially in urban

[90] Even so, EPA acknowledges that REMSAD has certain limitations not found in CMAQ.

[91] Whitten, G. memorandum: Comparison of REMSAD Reduced Chemistry to Full CB–4. February 19, 2001.

areas, to judge model performance. Commenters said that EPA should: (1) Update the evaluation to a more recent time period in order to take advantage of greatly expanded ambient $PM_{2.5}$ species measurements, especially in urban areas; and (2) calculate model performance statistics over monthly and/or seasonal time periods using daily/weekly observed/model-predicted data pairs.

Some commenters said that the 1996 data were so limited that it is not possible to determine whether REMSAD could be used with confidence to assess the effects of emissions changes. Still, other commenters said that the performance of REMSAD for the 1996 modeling platform was poor.

Commenters acknowledged that there are no universally accepted or EPA-recommended quantitative criteria for judging the acceptability of $PM_{2.5}$ model performance. In the absence of such model performance acceptance criteria, some commenters said that performance should be judged by comparing EPA's model performance results to the range of results obtained by other groups in the air quality modeling community who conducted other recent regional $PM_{2.5}$ model applications. A few commenters also identified specific model performance ranges and criteria that they said should be achievable for sulfate and $PM_{2.5}$, given the current state-of-science for aerosol modeling and measurement uncertainty. The specific values cited by these commenters are ±30 percent to ±50 percent for fractional bias, 50 percent to 75 percent for fractional error, and 50 percent for normalized error.

Response: The EPA agrees that the limited amount of ambient $PM_{2.5}$ species data available in 1996 affected our ability to evaluate model performance, especially in urban areas, and there were deficiencies in the performance of REMSAD using the 1996 model inputs. Also, EPA agrees that a model evaluation should be performed for a more recent time period in order to address these concerns. Thus, we conclude that the 1996 modeling platform which includes 1996 emissions, 1996 meteorology, and 1996 ambient data should be updated and improved, as recommended by commenters.

The EPA has developed a new modeling platform which includes emissions, meteorological data, and other model inputs for 2001. This platform was used to confirm the ability of our modeling system to replicate ambient $PM_{2.5}$ and component species in both urban and rural areas and, thus, establish the credibility of this platform for $PM_{2.5}$ modeling as part of CAIR.[92] In 2001, there was an extensive set of ambient $PM_{2.5}$ measurements including 133 urban Speciation Trends Network (STN) monitoring sites across the nation, with 105 of these in the East. This network did not exist in 1996. Also, the number of mainly suburban and rural monitoring sites in the Clean Air Status and Trends Network (CASTNET) and Interagency Monitoring of Protected Visual Environments (IMPROVE) network has increased to over 200 in 2001, compared to approximately 120 operating in 1996.

The EPA evaluated CMAQ for the 2001 modeling platform using the extensive set of 2001 monitoring data for $PM_{2.5}$ species. The evaluation included a statistical analysis in which the model predictions and measurements were paired in space and in time (*i.e.*, daily or weekly to be consistent with the sampling protocol of the monitoring network). Model performance statistics were calculated for each network with separate statistics for sites in the West and the East.[93] In response to comments that performance statistics should be calculated over monthly and/or seasonal time periods, we elected to use seasonal time periods in order to be consistent with our use of quarterly average $PM_{2.5}$ species as part of the procedure for projecting future concentrations, as described below in section VI.B.1. In addition, the sampling frequency at the CASTNET, IMPROVE, and STN sites may not provide sufficient samples in a 1-month period to provide a robust calculation of model performance statistics. Details of EPA's model evaluation for CMAQ using the 2001 modeling platform are in the report "Updated CMAQ Model Performance Evaluation for 2001" which can be found in the docket for today's rule.

The EPA agrees that there are no universally accepted performance criteria for $PM_{2.5}$ modeling and that performance should be judged by comparison to the performance found by other groups in the air quality modeling community. In this respect, we have compared our CMAQ 2001 model performance results to the range of performance found in other recent regional $PM_{2.5}$ model applications by other groups.[94] Details of this comparison can be found in the CMAQ evaluation report. Below is a summary of performance results from other, non-EPA modeling studies, for summer sulfate and winter nitrate. It CAIR. Overall, the general range of fractional bias (FB) and fractional error (FE) statistics for the better performing model applications are as follows:

—Summer sulfate is in the range of −10 percent to +30 percent for FB and 35 percent to 50 percent for FE; and

—Winter nitrate is in the range of +50 percent to +70 percent for FB and 85 percent to 105 percent for FE.

The corresponding performance statistics for EPA's 2001 CMAQ application as well as the 1996 REMSAD application used for the proposal modeling are provided in Table VI–1.

TABLE VI–1.—SELECTED PERFORMANCE EVALUATION STATISTICS FROM THE CMAQ 2001 SIMULATION AND THE REMSAD 1996 SIMULATION

Eastern U.S.	CMAQ 2001		REMSAD 1996	
	FB(%)	FE(%)	FB(%)	FE(%)
Sulfate (Summer):				
STN	14	44	.....	.....
Improve	10	42	−20	51
CASTNet	3	22	−21	59
Nitrate (Winter)				
STN	15	73	.....	.....

[92] The 2001 modeling platform is described in full in the NFR EITSD and NFR AQMTSD.

[93] For the purposes of this analysis, we have defined "East" as the area to the east of 100 degrees longitude, which runs from approximately the eastern half of Texas through the eastern half of North Dakota.

[94] These other modeling studies represent a wide range of modeling analyses which cover various models, model configurations, domains, years and/or episodes, chemical mechanisms, and aerosol modules.

TABLE VI–1.—SELECTED PERFORMANCE EVALUATION STATISTICS FROM THE CMAQ 2001 SIMULATION AND THE REMSAD 1996 SIMULATION—Continued

Eastern U.S.	CMAQ 2001		REMSAD 1996	
	FB(%)	FE(%)	FB(%)	FE(%)
Improve	21	92	67	103

The results indicate that the performance for CMAQ in 2001 is within the range or better than that found by other groups in recent applications. The performance also meets the benchmark goals suggested by several commenters. In addition, the CMAQ performance is considerably improved over that of the REMSAD 1996 performance for summer sulfate and winter nitrate, which were near the bounds or outside the range of other recent applications.

The CMAQ model performance results give us confidence that our applications of CMAQ using the new modeling platform provide a scientifically credible approach for assessing $PM_{2.5}$ concentrations for the purposes of CAIR.

b. Ozone Air Quality Modeling Platform and Model Evaluation

Overview

The EPA used the CAM_X, version 3.10 in the NPR to assess 8-hour ozone concentrations and the impacts of ozone and ozone precursor transport on elevated levels of ozone across the eastern U.S. The CAM_X is a publicly available Eulerian model that accounts for the processes that are involved in the production, transport, and destruction of ozone over a specified three-dimensional domain and time period. The CAM_X model was run with 1995/96 base year emissions to evaluate the performance of the modeling platform to replicate observed concentrations during the three 1995 episodes. This evaluation was comprised principally of statistical assessments of hourly, 1-hour daily maximum, and 8-hour daily maximum ozone predictions. As described in the NPR AQMTSD, model performance of CAM_X for ozone was judged against the results from previous regional ozone model applications. This analysis indicates that model performance was comparable to or better than that found in previous applications and is, therefore, acceptable for the purposes of CAIR ozone modeling.

The EPA did not receive comments on the CAM_X model or the model performance for ozone. The EPA did receive comments on the choice of episodes for ozone modeling, the meteorological data for these episodes, the spatial resolution of our modeling, and consistency between ozone and $PM_{2.5}$ modeling in terms of methods for projecting future air quality concentrations. As described below and in the RTC document and NFR AQMTSD, we continue to believe that: (1) The three 1995 episodes are representative episodes for regional modeling of 8-hour ozone; and (2) the meteorological data for these episodes and spatial resolution are adequate for use in our modeling for CAIR. Thus, the ozone air quality assessments in today's rule rely on CAM_X modeling of meteorological data for the three 1995 episodes for the domain and spatial resolution used for the NPR. As discussed below, we ran CAM_X for the updated 2001 emissions inventory and the updated 2010 and 2015 base case inventories as part of the process to project 8-hour ozone for these future year scenarios. We revised our method of projecting future ozone concentrations to be consistent with the method we are using for $PM_{2.5}$.

c. Model Grid Cell Configuration

As described in the NPR AQMTSD, the $PM_{2.5}$ modeling for the proposal was performed for a domain (*i.e.*, area) covering the 48 States and adjacent portions of Canada and Mexico. Within this domain, the model predictions were calculated for a grid network with a spatial resolution of approximately 36 km. Our 8-hour ozone modeling for proposal was performed using a nested grid network. The outer portion of this grid has a spatial resolution of approximately 36 km. The inner "nested" area, which covers a large portion of the eastern U.S., has a resolution of approximately 12 km.

Comment: Some commenters said that the 36 km grid cell size used by EPA in modeling $PM_{2.5}$ and the 36 km/12 km grid resolution used for ozone modeling are too coarse and are inconsistent with EPA's draft modeling guidance.

Response: We disagree with these comments and continue to believe that the grid dimensions for our $PM_{2.5}$ modeling and our 8-hour ozone modeling are not too coarse nor are they inconsistent with our draft guidance documents for $PM_{2.5}$ modeling[95] and ozone modeling.[96] The draft guidance for $PM_{2.5}$ modeling states that 36 km resolution is acceptable for regional scale applications in portions of the domain outside of nonattainment areas. For portions of the domain which cover nonattainment areas, 12 km resolution or less is recommended by the guidance. However, as stated in the guidance document, these recommendations were based on guidance for 8-hour ozone modeling because there was a lack of $PM_{2.5}$ modeling at different grid resolutions at the time the guidance was drafted. In addition, the $PM_{2.5}$ guidance states that exceptions to these recommendations can be made on a case-by-case basis.

For several reasons, we believe that 36 km resolution is sufficient for $PM_{2.5}$ modeling for the purposes of CAIR. First, recent analyses that compare 36 km to 12 km modeling of $PM_{2.5}$[97] indicate that spatial mean concentrations of gas phase and aerosol species at 36 km and 12 km are quite similar. A comparison of model predictions versus observations indicates that the model performance is similar at 12 km and 36 km in both rural and urban areas. Thus, using 12 km resolution does not necessarily provide any additional confidence in the results. Second, ambient measurements of sulfate and to a significant extent nitrate, which are the pollutants of most importance for CAIR, do not exhibit large spatial differences between rural and urban areas, as described elsewhere in today's rule. This implies that it is not necessary to use fine resolution modeling in order to properly capture

[95] U.S. EPA, 2000: Draft Guidance for Demonstrating Attainment of the Air Quality Goals for $PM_{2.5}$ and Regional Haze; Draft 1.1, Office of Air Quality Planning and Standards, Research Triangle Park, NC.

[96] U.S. EPA, 1999: Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS, Office of Air Quality Planning and Standards, Research Triangle Park, NC.

[97] VISTAS Emissions and Air Quality Modeling—Phase I Task 4cd Report: Model Performance Evaluation and Model Sensitivity Tests for Three Phase I Episodes. ENVIRON International Corporation, Alpine Geophysics, and University of California at Riverside, September 7, 2004.

the regional concentration patterns of these pollutants.

Our draft 8-hour ozone modeling guidance recommends using 36 km resolution for regional modeling with nested grid cells not exceeding 12 km over urban portions of the modeling domain. The guidance states that 4 to 5 km resolution for urban areas is preferred, if feasible. In addition, if 12 km modeling is used then plume-in-grid treatment for large point sources of NO_X should be considered.

Our modeling for CAIR is consistent with this guidance in that we use 36 km resolution for the outer portions of the region; 12 km resolution covering nearly all urban areas in the domain; and a plume-in-grid algorithm for major NO_X point sources in the region. In addition, analyses that compare model 12 km resolution to 4 km resolution for portions of our 1995 episodes indicate that the spatial fields predicted at both 12 km and 4 km have many common features in terms of the areas of high and low ozone.[98] In a comparison of model predictions to observation, the 12 km modeling was found to be somewhat more accurate than the finer 4 km modeling.

2. Emissions Inventory Data

For the proposed rule, emissions inventories were created for the 48 contiguous States and the District of Columbia. These inventories were estimated for a 2001 base year to reflect current emissions and for 2010 and 2015 future baseline scenarios. The inventories were prepared for electric generating units (EGUs), industrial and commercial sources (non-EGUs), stationary area sources, on-road vehicles, and non-road engines. The inventories contained both annual and typical summer season day emissions for the following pollutants: oxides of nitrogen (NO_X); volatile organic compounds (VOC); carbon monoxide (CO); sulfur dioxide (SO_2); direct particulate matter with an aerodynamic diameter less than 10 micrometers (PM_{10}) and less than 2.5 micrometers ($PM_{2.5}$); and ammonia (NH_3). A summary of the development of these inventories is provided below. Additional information on the emissions inventory used for proposal can be found in the NPR AQMTSD.

Because the complete 2001 National Emission Inventory (NEI) and future-year projections consistent with that NEI were not available in a form suitable for air quality modeling when needed for the proposal, we developed a reasonably representative "proxy" inventory for 2001. For the EGU, mobile, and non-road emissions sectors, 1996-to-2001 adjustment ratios were created by dividing State-level total emissions for each pollutant for 2001 by the corresponding consistent 1996 emissions. These adjustment ratios were then multiplied by the REMSAD-ready 1996 emissions for these two sectors to produce REMSAD-ready files for the 2001 proxy. For non-EGUs and stationary area sources, linear interpolations were performed between the REMSAD-ready 1996 emissions and the REMSAD-ready 2010 base case emissions to produce 2001 proxy emissions for these two sectors. Details on the creation of the 2001 proxy inventory used for proposal are provided in the NPR AQMTSD.

The NPR future 2010 and 2015 base case emissions reflect projected economic growth and control programs that are to be implemented by 2010 and 2015, respectively. Control programs included in these future base cases include those State, local, and Federal measures already promulgated and other significant measures expected to be promulgated before the final rule is implemented. Future year 2010 and 2015 base case EGU emissions were obtained from versions 2.1 and 2.1.6 of the Integrated Planning Model (IPM).

Comment: Several commenters stated that the emission inventory used for the "proxy" 2001 base year was not sufficient for the rulemaking, primarily because it was developed from a 1996 modeling inventory by applying various adjustment factors. Commenters suggested that: (1) More up-to-date inventories were now available and should be used; (2) the most recent Continuous Emissions Monitoring (CEM) data or throughput information should be used to derive a 2001 EGU inventory; and (3) EPA should use the 2001 MOBILE6 and NONROAD2002 models for estimating on-road mobile and non-road engine emissions, respectively.

Response: The EPA believes that the base year for modeling should be as recent as possible, given the availability of nationally complete emissions estimates and ambient monitoring data. For the analyses of the final rule, EPA has used a base year inventory developed specifically for 2001. The base year inventory for the electric utility sector now uses measured CEM emissions data for 2001. The non-EGU point source and stationary-area source sectors are based on the final 1999 NEI data submittals from State, local, and Tribal air agencies. This inventory is the latest available quality-assured and reviewed national emission data set for these sectors. The 1999 data for non-EGU point and stationary-area sources were projected to represent a 2001 inventory using State/county-specific and sector-specific growth rates. The on-road mobile inventory uses MOBILE version 6.2 and the non-road engines inventory uses the NONROAD2004 model, both with updated input parameters to calculate emissions for 2001. More detailed information on the development of the emissions inventories can be found in the NFR EITSD.

Comment: Commenters stated that EPA failed to develop an accurate and comprehensive ammonia emission inventory from soil, fertilizer, and animal husbandry sources.

Response: The 2001 inventory used for the analyses for the final rule includes a new national county-level ammonia inventory developed by EPA using the latest emission rates selected based on a comprehensive literature review, and activity levels as provided by the U.S. Census of Agriculture for animal husbandry. The 2001 inventory from fertilizer application sources was compiled from State and local submissions to EPA for 1999, augmented as necessary with EPA estimates, and grown to 2001 using State/county-specific and category-specific growth rates. With regard to background soil emissions of NH_3, EPA believes that the current state of understanding of background soil ammonia releases and sinks is insufficient to warrant including these emission sources in modeling inventories at this time.

Comment: Two commenters indicated that EPA should revise 2010 and 2015 base case emissions by improving the methods for estimating economic growth and not rely on the Bureau of Economic Analysis (BEA) data used for proposal.

Response: In response to these comments, EPA has refined its economic growth projections. In addition to updated versions of the MOBILE6, NONROAD, and IPM models, EPA developed new economic growth rates for stationary, area, and non-EGU point sources. For these two sectors, the final approach uses a combination of: (1) Regional or national fuel-use forecast data from the U.S. Department of Energy for source types that map to fuel use sectors (*e.g.*, commercial coal, industrial natural gas); (2) State-specific growth rates from the Regional Economic Model, Inc. (REMI) Policy Insight® model, version 5.5; and (3) forecasts by

[98] Irwin, J. et al. "Examination of model predictions at different horizontal grid resolutions." Submitted for Publication to Environmental Fluid Mechanics.

specific industry organizations and Federal agencies. For more detail on the growth methodologies, please refer to the NFR EITSD.

3. Meteorological Data

In order to solve for the change in pollutant concentrations over time and space, the air quality model requires certain meteorological inputs that, in part, govern the formation, transport, and destruction of pollutant material. Two separate sets of meteorological inputs were used in the air quality modeling completed as part of the NPR. The meteorological input files for the proposal $PM_{2.5}$ modeling were developed from a Fifth-Generation NCAR/Pennsylvania State Mesoscale Model (MM5) model simulation for the entire year of 1996. The gridded meteorological data for the three 1995 ozone episodes were developed using the Regional Atmospheric Modeling System (RAMS). Both of these models are publicly-available, widely-used, prognostic meteorological models that solve the full set of physical and thermodynamic equations which govern atmospheric motions. Further, each of these specific meteorological data sets has been utilized in past EPA rulemaking modeling analyses (*e.g.*, the Nonroad Land-based Diesel Engines Standards).

Comment: Several commenters claimed that the 1996 meteorological modeling data used to support the fine particulate modeling were outdated and non-representative. We also received recommendations from commenters on benchmarks to be used as goals for judging the adequacy of meteorological modeling.

Response: The EPA draft $PM_{2.5}$ modeling guidance which provides general recommendations on meteorological periods to model for $PM_{2.5}$ purposes lists three primary general criteria for consideration: (a) Variety of meteorological conditions; (b) existence of an extensive air quality/meteorological data bases; and (c) sufficient number of days. The approach recommended in the guidance for modeling annual $PM_{2.5}$ is to use a single, representative year. Based on the comments received and the criteria outlined in the guidance, EPA developed meteorological data for the entire calendar year of 2001. This year was chosen for the $PM_{2.5}$ modeling platform based on several factors, specifically: (a) It corresponds to the most recent set of emissions data; (b) there are considerable ambient $PM_{2.5}$ species data for use in model evaluation (as described in section VI.A.1., above); and (c) Federal Reference Method (FRM) $PM_{2.5}$ data for this year are included in the calculation of the most recent $PM_{2.5}$ design values used for designating $PM_{2.5}$ nonattainment areas. In view of these factors, EPA believes that 2001 meteorology are representative for $PM_{2.5}$ modeling for the purposes of this rule.

The new 2001 meteorological data used for $PM_{2.5}$ modeling were derived from an updated version of the MM5 model used for the 1996 meteorology used for proposal. The version of MM5 used for the 2001 simulation contains more sophisticated physics options with respect to features like cloud microphysics and land-surface interactions, and more refined vertical resolution of the atmosphere compared to the version used for modeling 1996 meteorology. While there are currently no universally accepted criteria for judging the adequacy of meteorological model performance, EPA compared the 2001 MM5 model performance against the benchmark goals [99] recommended by some commenters. The benchmark goals suggest that temperature bias should be within the range of approximately ± 0.5 degrees C and errors less than or equal to 2.0 degrees C are typical.

In general, the model performance statistics for our 2001 meteorological modeling are in line with the above benchmark goals. Specfically, the mean temperature bias of our 2001 meteorological modeling was approximately 0.6 degrees C and the mean error was approximately 2.0 degrees C. The evaluation of the 2001 MM5 for humidity (water vapor mixing ratio) shows biases of less than 0.5 g/kg and errors of approximately 1 g/kg, which compare favorably to the goals of ± 1 g/kg for bias and 2 g/kg or less error. Model performance for winds in our 2001 simulation was also improved compared to what has historically been found in MM5 modeling studies. The index of agreement for surface winds in the 2001 case equaled 0.86, which is far better than the benchmark goal of 0.60. The precipitation evaluation results show that the model generally replicates the observed data, but is overestimating precipitation in the summer months. More information about the model performance evaluation and the MM5 configuration is provided in the NFR AQMTSD.

Comment: Several groups criticized the lack of quantitative meteorological model evaluation data for the 1995 RAMS meteorological modeling used for episodic ozone modeling.

Response: A peer-reviewed, quantitative evaluation of the RAMS model performance for this meteorological period is provided by Hogrefe, *et al.*[100] This analysis was performed using RAMS predictions for June through August of 1995. The results show that the RAMS biases and errors are generally in line with past meteorological model simulations by other groups outside EPA. The EPA remains satisfied that the 1995 RAMS meteorological inputs for the three CAM_x ozone modeling episodes are of sufficient quality and we have continued to use these inputs for the ozone analyses for the final rule.

Comment: The EPA received several comments on the episodes selected for ozone modeling. There was general criticism that the ozone modeling did not follow EPA's own guidance for the selection of episodes. Additionally, there was specific criticism that the episodes did not provide for a reasonable test of the 8-hour ozone NAAQS in some areas.

Response: The draft 8-hour ozone guidance recommends, at a minimum, that four criteria be used to select episodes which are appropriate to model. This guidance is generally intended for local attainment demonstrations, as opposed to regional transport analyses, but it does recommend that in applying a regional model one should choose episodes meeting as many of the criteria as possible, though it acknowledges there may be tradeoffs. Given the large number of nonattainment areas within the ozone domain, it would be extremely difficult to assess the criteria on a area-by-area basis. However, from a general perspective, the 1995 episodes address all of the primary criteria, which include: (1) A variety of meteorological conditions; (2) measured ozone values that are close to current air quality; (3) extensive meteorological and air quality data; and (4) a sufficient number of days. More detail is provided in the NFR AQMTSD, but here is a brief description of how each of the four primary criteria are met by the 1995 cases.

With regard to the criteria of meteorological variations, we have completed inert tracer simulations for each of the three 1995 episodes that show different transport patterns in all three cases. For example the June case involves east-to-west transport; the July case involves west-to-east transport; and

[99] Environ, Enhanced Meteorological Modeling and Performance Evaluation for Two Texas Ozone Episodes. August 2001.

[100] Hogrefe, C. *et al.* "Evaluating the performance of regional-scale photochemical modeling systems: Part 1-meteorological predictions." Atmospherics Environment, vol. 35 (2001), pp. 4159–4174.

the August case involves south-to-north transport. In a separate analysis to determine whether the 1995 modeling days correspond to commonly occurring and ozone-conducive meteorology, EPA has applied a multi-variate statistical approach for characterizing daily meteorological patterns and investigating their relationship to 8-hour ozone concentrations in the eastern U.S. Across the 16 sites for which the analysis was completed, there were five to six distinct sets of meteorological conditions, called regimes, that occurred during the ozone seasons studied. An analysis of the 8-hour daily maximum ozone concentrations for each of the meteorological regimes was undertaken to determine the distribution of ozone concentrations and the frequency of occurrence of each regimes. The EPA determined that between 60 and 70 percent of the episode days we modeled are associated with the most frequently occurring, high ozone potential, meteorological regimes. These results also provide support that the episodes being modeled are representative of conditions present when high ozone concentrations are measured throughout the modeling domain. For the second criteria, EPA has completed an analysis which shows that the 1995 episodes contain observed 8-hour daily maximum ozone values that approximate recent ambient concentrations over the eastern U.S. Additional analyses performed by EPA and others have concluded that each of the three episodes involves widespread areas of elevated ozone concentrations. The synoptic meteorological pattern of the July 1995 episode has been identified by one of the commenters as representing a classic set of conditions necessary for high ozone over the eastern U.S. While the ozone was not quite as widespread in the June and August 1995 episodes, these periods also contained exceedances of the 8-hour ozone NAAQS in most portions of the region.

We believe that there is ample meteorological and air quality data available to support an evaluation of the modeling for these episodes. Specifically, there were over 700 ozone monitors reporting across the domain for use in model evaluation. As noted above, the model performance for these episodes compares favorably to the recommendations in EPA's urban modeling guidance. In addition, the modeling period is comprised of 30 days, not including model ramp-up periods which is considerably more than is typically used in an attainment demonstration modeling submitted to EPA by a State. Finally, EPA's draft ozone guidance also indicates as one of four secondary criteria that extra weight can be assigned to modeling episodes for which there is prior experience in modeling. The 1995 CAIR ozone episodes have been successfully used to drive the air quality modeling completed for several recent notice-and-comment rulemakings (Tier-2, Heavy Duty Engine, and NonRoad). Based on the analyses discussed above and the adherence to the modeling guidance, EPA is satisfied that the 1995 CAM_X episodes are appropriate for continued use.

B. How Did EPA Project Future Nonattainment for $PM_{2.5}$ and 8-Hour Ozone?

1. Projection of Future $PM_{2.5}$ Nonattainment

a. Methodology for Projecting Future $PM_{2.5}$ Nonattainment

In the NPR, we assessed the prospects for future attainment and nonattainment in 2010 and 2015 of the $PM_{2.5}$ annual NAAQS. The approach for identifying areas expected to be nonattainment for $PM_{2.5}$ in the future involved using the model predictions in a relative way to forecast current $PM_{2.5}$ design values to 2010 and 2015. The modeling portion of this approach included annual simulations for 2001 proxy emissions and for 2010 and 2015 base case emissions scenarios. As described below, the predictions from these runs were used to calculate relative reduction factors (RRFs) which were then applied to current $PM_{2.5}$ design values from FRM sites in the East. This approach is consistent with the procedures in the draft of EPA's $PM_{2.5}$ modeling guidance.

To determine the current $PM_{2.5}$ air quality for use in projecting design values to the future, we selected the higher of the 1999–2001 or 2000–2002 design value (the most recent ambient data at the time of the proposal) for each monitor that measured nonattainment in 2000–2002. For those sites that were attaining the $PM_{2.5}$ standard based on their 2000–2002 design value, we used the value from this period as the starting point for projecting 2010 and 2015 air quality at these sites.

The procedure for calculating future year $PM_{2.5}$ design values is called the Speciated Modeled Attainment Test (SMAT). The test uses model predictions in a relative sense to estimate changes expected to occur in each major $PM_{2.5}$ species. These species are sulfate, nitrate, organic carbon, elemental carbon, crustal, and un-attributed mass. The relative change in model-predicted species concentrations were applied to ambient species measurements in order to project each species for the future year scenarios. We applied a spatial interpolation to the IMPROVE and STN speciation data as a means for estimating species composition fractions for the FRM monitoring sites. Future year $PM_{2.5}$ was calculated by summing the projected concentrations of each species. The SMAT technical procedures, as applied for the NPR, are contained in the NPR and NPR AQMTSD.

As noted above, the procedures for determining future year $PM_{2.5}$ concentrations were applied for each FRM site. For counties with only one FRM site, the forecast design value for that site was used to determine whether or not the county was predicted to be nonattainment in the future. For counties with multiple monitoring sites, the site with the highest future concentration was selected for that county. Those counties with future year concentrations of 15.1 $\mu g/m^3$ (as rounded up from 15.05 $\mu g/m^3$) or more were predicted to be nonattainment. Based on the modeling performed for the NPR, 61 counties in the East were forecast to be nonattainment for the 2010 base case. Of these, 41 were forecast to remain nonattainment for the 2015 base case.

Comment: Some commenters said that EPA has not established the credibility of using models in a relative sense to estimate future $PM_{2.5}$ concentrations and that poor performance of REMSAD for 1996 calls into question the use of models to adequately determine the effects of changes in emissions. One commenter said that a mechanistic model evaluation, in which model predictions of $PM_{2.5}$ precursor photochemical oxidants are compared to corresponding measurements, is an approach for gaining confidence in the ability of a model to provide a credible response to emission changes.

Response: The EPA believes the future year nonattainment projections should be based on using model predictions in a relative sense. By applying the model in a relative way, each measured component of $PM_{2.5}$ is adjusted upward or downward based on the percent change in that component, as determined by the ratio of future year to base year model predictions. The EPA feels that by using this approach, we are able to reduce the risk that overprediction or underprediction of $PM_{2.5}$ component species may unduly affect our projection of future year nonattainment.

The EPA agrees with commenters that one way to establish confidence in the credibility of this approach is to

determine whether model predictions of $PM_{2.5}$ precursors are generally comparable to corresponding measured data. In this regard, we compared the CMAQ predictions to observations for several precursor gases for which measurements were available in 2001. These gases include sulfur dioxide, nitric acid, and ozone.

The results for the East are summarized in Table VI–2. Additional details on this analysis can be found in the CMAQ evaluation report. The results indicate that for both summer and winter ozone, the fractional bias and error is within the recommended range for urban scale ozone modeling included in EPA's draft guidance for 8-hour ozone modeling. For the other species examined, there are limited ambient data and few other studies against which to compare our findings. Still, our performance results for these species are within the range suggested as acceptable by commenters for sulfate (*i.e.*, ±30 percent to ±60 percent for fractional bias and 50 percent to 75 percent for fractional error). Thus, CMAQ is considered appropriate and credible for use in projecting changes in future year $PM_{2.5}$ concentrations and the resultant health/economic benefits due to the emissions reductions.

TABLE VI–2.—CMAQ MODEL PERFORMANCE STATISTICS FOR OZONE, TOTAL NITRATE, AND NITRIC ACID IN THE EAST

Eastern U.S.	CMAQ 2001	
	FB (%)	FE (%)
Ozone:		
AIRS (Summer)	13	21
AIRS (Winter)	−9	31
Sulfur Dioxide:		
CASTNet (Summer)	31	48
CASTNet (Winter)	39	43
Nitric Acid:		
CASTNet (Summer)	29	39
CASTNet (Winter)	−21	55

Comment: Several commenters said that EPA's SMAT approach is flawed and suggested alternative methods for attributing individual species mass to the FRM measured $PM_{2.5}$ mass. One commenter detailed several different methods to apportion the FRM mass to individual $PM_{2.5}$ species. They refer to two different estimation methods as the "FRM equivalent" approach and the "best estimate" approach.

Response: The EPA agrees that alternative methodologies can be used to apportion $PM_{2.5}$ species fractions to the FRM data. We believe that revising SMAT to use a methodology similar to an "FRM equivalent" methodology, as described in the Notice of Data Availability (69 FR 47828; August 6, 2004), is warranted. Since nonattainment designation determinations and future year nonattainment projections are based on measured FRM data, we believe that the $PM_{2.5}$ species data should be adjusted to best conform to what is measured on the FRM filters. Based on comments, EPA has revised our technique for projecting current $PM_{2.5}$ data to incorporate some aspects of the commenter's "FRM equivalent" methodology. As described in more detail in the NFR AQMTSD, we believe our revised methodology to be the most technically appropriate way of estimating what is measured on the FRM filters.

Full documentation of the revised EPA SMAT methodology is contained in the updated SMAT report [101]. In brief, we revised the SMAT methodology to take into account several known differences between what is measured by speciation monitors and what is measured on FRM filters. Among the revisions were calculations to account for nitrate, ammonium, and organic carbon volatilization, blank $PM_{2.5}$ mass, particle bound water, the degree of neutralization of sulfate, and the uncertainty in estimating organic carbon mass.

Comment: Several commenters noted that the future year design values were based on projections of the 1999–2001 and/or 2000–2002 FRM monitoring data and that there are more recent design value data available for the 2001–2003 design value period. Commenters also noted that the 2001–2003 data shows lower $PM_{2.5}$ concentrations at the majority of sites and therefore, by projecting the highest design value, we are overestimating the future year $PM_{2.5}$ values.

Response: As stated above, the $PM_{2.5}$ projection methodology in the NPR used the higher of the 1999–2001 or 2000–2002 $PM_{2.5}$ design value data. The draft modeling guidance for $PM_{2.5}$ specifies the use of the higher of the three design value periods which straddle the emissions year. The emissions year is 2001 and therefore the three periods would be 1999–2001, 2000–2002, and 2001–2003. Since the 2001–2003 data is now available, we are using it as part of the current year $PM_{2.5}$ calculations for the final rule.

The observation by a commenter that the 2001–2003 data are generally lower than in the previous two design value periods (*i.e.*, 1999–2001 and 2000–2002) leads to the issue of how to reduce the influence of year-to-year variability in meteorology and emissions on our estimate of current air quality. As a consequence of this year-to-year variability in concentrations, relying on design values from any single period, as in the approach used for proposal, may not provide a robust representation of current air quality for use in forecasting the future. Specifically, the lower $PM_{2.5}$ values in 2001–2003 may not be representative of the current modeling period. To address the issue of year-to-year variability in the ambient data we have modified our methodology to use an average of the three design value periods that straddle the base year emissions year (*i.e.*, 2001). In this case it is the average of the 1999–2001, 2000–2002, and 2001–2003 design values. The average of the three design values is not a straight 5-year average. Rather, it is a weighted average of the 1999–2003 period. That is, by averaging 1999–2001, 2000–2002, and 2001–2003, the value from 2001 is weighted three times; 2000 and 2002 are each weighted twice and 1999 and 2003 are each weighted once. This approach has the desired benefits of: (1) weighting the $PM_{2.5}$ values towards the middle year of the 5-year period, which is the 2001 base year for

[101] Procedures for Estimating Future $PM_{2.5}$ Values for the CAIR Final Rule by Application of the (Revised) Speciated Modeled Attainment Test (SMAT), docket number OAR–2003–0053–1907.

our emissions projections; and (2) smoothing out the effects of year-to-year variability in emissions and meteorology that occurs over the full 5-year period. We have adopted this method for use in projecting future $PM_{2.5}$ nonattainment for the final rule analysis. We plan to incorporate this new methodology into the next draft version of our $PM_{2.5}$ modeling guidance.

b. Projected 2010 and 2015 Base Case $PM_{2.5}$ Nonattainment Counties

For the final rule, we have revised the projected $PM_{2.5}$ nonattainment counties for 2010 and 2015 by applying CMAQ for the entire year (*i.e.*, January through December) of 2001 using 2001 Base Year and 2010 and 2015 future base case emissions from the new modeling platform, as described in section VI.A.2. The 2010 and 2015 base case $PM_{2.5}$ nonattainment counties were determined applying the updated SMAT method using current 1999–2003 $PM_{2.5}$ air quality coupled with the $PM_{2.5}$ species from the 2001 Base Year and 2010 and 2015 base case CMAQ model runs. For counties with multiple monitoring sites, the site with the highest future concentration was selected for that county. Those counties with future year design values of 15.05 $\mu g/m^3$ or higher were predicted to be nonattainment. The result is that, without controls beyond those included in the base case, 79 counties in the East are projected to be nonattainment for the 2010 base case. For the 2015 base case, 74 counties in the East are projected to be nonattainment for $PM_{2.5}$.

In light of the uncertainties inherent in regionwide modeling many years into the future, of the 79 nonattainment counties projected for the 2010 base case, we have the most confidence in our projection of nonattainment for those counties that are not only forecast to be nonattainment in 2010, based on the SMAT method, but that also measure nonattainment for the most recent period of available ambient data (*i.e.*, 2001–2003). In our analysis for the 2010 base case, there are 62 such counties in the East that are both "modeled" nonattainment and currently have "monitored" nonattainment. We refer to these counties as having "modeled plus monitored" nonattainment. Out of an abundance of caution, we are using only these 62 "modeled plus monitored" counties as the downwind receptors in determining which upwind States make a significant contribution to $PM_{2.5}$ in downwind States.

The 79 counties in the East that we project will be nonattainment for $PM_{2.5}$ in 2010 and the subset of 62 counties that are also "monitored" nonattainment in 2001–2003, are identified in Table VI–3. The 2015 base case $PM_{2.5}$ nonattainment counties are provided in Table VI–4.

TABLE VI–3.—PROJECTED $PM_{2.5}$ CONCENTRATIONS ($\mu G/M^3$) FOR NONATTAINMENT COUNTIES IN THE 2010 BASE CASE

State	County	2010 Base	"Modeled + Monitored"
Alabama	DeKalb Co	15.23	No.
Alabama	Jefferson Co	18.57	Yes.
Alabama	Montgomery Co	15.12	No.
Alabama	Morgan Co	15.29	No.
Alabama	Russell Co	16.17	Yes.
Alabama	Talladega Co	15.34	No.
Delaware	New Castle Co	16.56	Yes.
District of Columbia		15.84	Yes.
Georgia	Bibb Co	16.27	Yes.
Georgia	Clarke Co	16.39	Yes.
Georgia	Clayton Co	17.39	Yes.
Georgia	Cobb Co	16.57	Yes.
Georgia	DeKalb Co	16.75	Yes.
Georgia	Floyd Co	16.87	Yes.
Georgia	Fulton Co	18.02	Yes.
Georgia	Hall Co	15.60	No.
Georgia	Muscogee Co	15.65	No.
Georgia	Richmond Co	15.68	No.
Georgia	Walker Co	15.43	Yes.
Georgia	Washington Co	15.31	No.
Georgia	Wilkinson Co	16.27	No.
Illinois	Cook Co	17.52	Yes.
Illinois	Madison Co	16.66	Yes.
Illinois	St. Clair Co	16.24	Yes.
Indiana	Clark Co	16.51	Yes.
Indiana	Dubois Co	15.73	Yes.
Indiana	Lake Co	17.26	Yes.
Indiana	Marion Co	16.83	Yes.
Indiana	Vanderburgh Co	15.54	Yes.
Kentucky	Boyd Co	15.23	No.
Kentucky	Bullitt Co	15.10	No.
Kentucky	Fayette Co	15.95	Yes.
Kentucky	Jefferson Co	16.71	Yes.
Kentucky	Kenton Co	15.30	No.
Maryland	Anne Arundel Co	15.26	Yes.
Maryland	Baltimore City	16.96	Yes.
Michigan	Wayne Co	19.41	Yes.
Missouri	St. Louis City	15.10	No.
New Jersey	Union Co	15.05	Yes.
New York	New York Co	16.19	Yes.
North Carolina	Catawba Co	15.48	Yes.
North Carolina	Davidson Co	15.76	Yes.
North Carolina	Mecklenburg Co	15.22	No.
Ohio	Butler Co	16.45	Yes.

TABLE VI–3.—PROJECTED $PM_{2.5}$ CONCENTRATIONS ($\mu G/M^3$) FOR NONATTAINMENT COUNTIES IN THE 2010 BASE CASE—Continued

State	County	2010 Base	"Modeled + Monitored"
Ohio	Cuyahoga Co	18.84	Yes.
Ohio	Franklin Co	16.98	Yes.
Ohio	Hamilton Co	18.23	Yes.
Ohio	Jefferson Co	17.94	Yes.
Ohio	Lawrence Co	16.10	Yes.
Ohio	Mahoning Co	15.39	Yes.
Ohio	Montgomery Co	15.41	Yes.
Ohio	Scioto Co	18.13	Yes.
Ohio	Stark Co	17.14	Yes.
Ohio	Summit Co	16.47	Yes.
Ohio	Trumbull Co	15.28	No.
Pennsylvania	Allegheny Co	20.55	Yes.
Pennsylvania	Beaver Co	15.78	Yes.
Pennsylvania	Berks Co	15.89	Yes.
Pennsylvania	Cambria Co	15.14	Yes.
Pennsylvania	Dauphin Co	15.17	Yes.
Pennsylvania	Delaware Co	15.61	Yes.
Pennsylvania	Lancaster Co	16.55	Yes.
Pennsylvania	Philadelphia Co	16.65	Yes.
Pennsylvania	Washington Co	15.23	Yes.
Pennsylvania	Westmoreland Co	15.16	Yes.
Pennsylvania	York Co	16.49	Yes.
Tennessee	Davidson Co	15.36	No.
Tennessee	Hamilton Co	16.89	Yes.
Tennessee	Knox Co	17.44	Yes.
Tennessee	Sullivan Co	15.32	No.
West Virginia	Berkeley Co	15.69	Yes.
West Virginia	Brooke Co	16.63	Yes.
West Virginia	Cabell Co	17.03	Yes.
West Virginia	Hancock Co	17.06	Yes.
West Virginia	Kanawha Co	17.56	Yes.
West Virginia	Marion Co	15.32	Yes.
West Virginia	Marshall Co	15.81	Yes.
West Virginia	Ohio Co	15.14	Yes.
West Virginia	Wood Co	16.66	Yes.

TABLE VI–4.—PROJECTED $PM_{2.5}$ CONCENTRATIONS ($\mu G/M<>^3$) FOR NONATTAINMENT COUNTIES IN THE 2015 BASE CASE

State	County	2015 Base
Alabama	DeKalb Co	15.24
Alabama	Jefferson Co	18.85
Alabama	Montgomery Co	15.24
Alabama	Morgan Co	15.26
Alabama	Russell Co	16.10
Alabama	Talladega Co	15.22
Delaware	New Castle Co	16.47
District of Columbia		15.57
Georgia	Bibb Co	16.41
Georgia	Chatham Co	15.06
Georgia	Clarke Co	16.15
Georgia	Clayton Co	17.46
Georgia	Cobb Co	16.51
Georgia	DeKalb Co	16.82
Georgia	Floyd Co	17.33
Georgia	Fulton Co	18.00
Georgia	Hall Co	15.36
Georgia	Muscogee Co	15.58
Georgia	Richmond Co	15.76
Georgia	Walker Co	15.37
Georgia	Washington Co	15.34
Georgia	Wilkinson Co	16.54
Illinois	Cook Co	17.71
Illinois	Madison Co	16.90
Illinois	St. Clair Co	16.49
Illinois	Will Co	15.12
Indiana	Clark Co	16.37
Indiana	Dubois Co	15.66
Indiana	Lake Co	17.27
Indiana	Marion Co	16.77

TABLE VI–4.—PROJECTED $PM_{2.5}$ CONCENTRATIONS (μG/M<>3) FOR NONATTAINMENT COUNTIES IN THE 2015 BASE CASE—Continued

State	County	2015 Base
Indiana	Vanderburgh Co	15.56
Kentucky	Boyd Co	15.06
Kentucky	Fayette Co	15.62
Kentucky	Jefferson Co	16.61
Kentucky	Kenton Co	15.09
Maryland	Baltimore City	17.04
Maryland	Baltimore Co	15.08
Michigan	Wayne Co	19.28
Mississippi	Jones Co	15.18
Missouri	St. Louis City	15.34
New York	New York Co	15.76
North Carolina	Catawba Co	15.19
North Carolina	Davidson Co	15.34
Ohio	Butler Co	16.32
Ohio	Cuyahoga Co	18.60
Ohio	Franklin Co	16.64
Ohio	Hamilton Co	18.03
Ohio	Jefferson Co	17.83
Ohio	Lawrence Co	15.92
Ohio	Mahoning Co	15.13
Ohio	Montgomery Co	15.16
Ohio	Scioto Co	17.92
Ohio	Stark Co	16.86
Ohio	Summit Co	16.14
Ohio	Trumbull Co	15.05
Pennsylvania	Allegheny Co	20.33
Pennsylvania	Beaver Co	15.54
Pennsylvania	Berks Co	15.66
Pennsylvania	Delaware Co	15.52
Pennsylvania	Lancaster Co	16.28
Pennsylvania	Philadelphia Co	16.53
Pennsylvania	York Co	16.22
Tennessee	Davidson Co	15.36
Tennessee	Hamilton Co	16.82
Tennessee	Knox Co	17.34
Tennessee	Shelby Co	15.17
Tennessee	Sullivan Co	15.37
West Virginia	Berkeley Co	15.32
West Virginia	Brooke Co	16.51
West Virginia	Cabell Co	16.86
West Virginia	Hancock Co	16.97
West Virginia	Kanawha Co	17.17
West Virginia	Marshall Co	15.52
West Virginia	Wood Co	16.69

2. Projection of Future 8-Hour Ozone Nonattainment

a. Methodology for Projecting Future 8-Hour Ozone Nonattainment

The approach for projecting future 8-hour ozone concentrations used by EPA in the NPR was based on applying the model in a relative sense to estimate the change in ozone between the base year (2001) and each future scenario. Projected 8-hour ozone design values in 2010 and 2015 were estimated by combining the relative change in model predicted ozone from 2001 to the future scenario with an estimate of the base year ambient 8-hour ozone design value. These procedures for calculating future case ozone design values are consistent with EPA's draft modeling guidance for 8-hour ozone attainment demonstrations. The draft guidance specifies the use of the higher of the design values from (a) the period that straddles the emissions inventory base year or (b) the design value period which was used to designate the area under the ozone NAAQS. At the time of the proposal, 2000–2002 was the design value period which both straddled the 2001 base year inventory and was also the latest period available.

Comment: Commenters noted that the procedures used by EPA for projecting future 8-hour ozone concentrations differ from the procedures used for projecting $PM_{2.5}$. These commenters said that EPA should harmonize the two approaches.

Response: In response to comments, we have made several changes in the approach to projecting future 8-hour ozone nonattainment in order to follow an approach that is consistent with the manner in which $PM_{2.5}$ projections are determined. The approach we are using to project $PM_{2.5}$ for the final rule analysis is described in section VI.B.1, above. In order to harmonize the ozone approach with the approach used for $PM_{2.5}$, we are using the weighted average of the design values for the periods that straddle the emission base year (*i.e.*, 2001). These periods are 1999–2001, 2000–2002, and 2001–2003. In this approach, the fourth-high ozone value from 2001 is weighted three times, 2000 and 2002 are weighted twice, and 1999 and 2003 are weighted once. This has the desired effect of weighting the projected ozone values towards the middle year of the 5-year period, which is the emissions year (2001), while

accounting for the emissions and meteorological variability that occurs over the full 5-year period. The average weighted concentration is expected to be more representative as a starting point for future year projections than choosing (a) the single design value period that straddles the base year or (b) the design value used for designations. We plan to incorporate this new methodology into the next draft version of our ozone modeling guidance.

Comment: One commenter claimed that the 2010 and 2015 ozone projections in the proposal base cases were too optimistic, that is, that the modeling was underestimating the number of areas that may be in nonattainment in the future. The commenter urged a more conservative approach to assessing the future attainment status of areas.

Response: The technical basis for the comment stemmed from the assertion that the regional ozone modeling that EPA performed for the proposal was not of "SIP-quality." The EPA response to the specific technical issues with regard to episode selection and grid resolution can be found in section VI.A as well as in the response to comments document. The EPA remains confident that the CAIR 8-hour ozone modeling platform is appropriate for assessing potential levels of future nonattainment.

b. Projected 2010 and 2015 Base Case 8-Hour Ozone Nonattainment Counties

For the final rule, we have revised our projections of ozone nonattainment for the 2010 and 2015 base cases by applying CAMx for the three 1995 ozone episodes using 2001 Base Year and 2010 and 2015 future base case emissions from the new modeling platform, as described in section VI.A.2. The revised 2010 and 2015 base case 8-hour ozone nonattainment counties were determined by applying the relative change in 8-hour ozone predicted by these CAMx model runs to the weighted average 1999–2003 8-hour ozone concentrations as described above and, in more detail, in the NFR AQMTSD. For counties with multiple monitoring sites, the site with the highest future concentration was selected for that county. Those counties with future year design values of 85 parts per billion (ppb) or higher were predicted to be nonattainment.

As a result of our updated modeling we project that, without controls beyond those in the base case, there will be 40 8-hour ozone nonattainnment counties in 2010 and 22 nonattainment counties in 2015. All of the 40 counties that we are projecting to be nonattainment for the 2010 base case are also measuring nonattainment based on the most recent design value period (*i.e.*, 2001–2003). We refer to these counties as "modeled plus monitored" nonattainment, as described above in section IV.B.1 for $PM_{2.5}$. We are using these 40 counties as the downwind receptors to determine which States make a significant contribution to 8-hour ozone nonattainment in downwind States.

The counties we are projecting to be nonattainment for 8-hour ozone in the 2010 base case and 2015 base case are listed in Table VI–5 and Table VI–6, respectively.

TABLE VI–5.—PROJECTED 2010 BASE CASE 8-HOUR OZONE NONATTAINMENT COUNTIES AND CONCENTRATIONS (PPB)

State	County	2010 Base
Connecticut	Fairfield Co	92.6
Connecticut	Middlesex Co	90.9
Connecticut	New Haven Co	91.6
Delaware	New Castle Co	85.0
District of Columbia		85.2
Georgia	Fulton Co	86.5
Maryland	Anne Arundel Co	88.8
Maryland	Cecil Co	89.7
Maryland	Harford Co	93.0
Maryland	Kent Co	86.2
Michigan	Macomb Co	85.5
New Jersey	Bergen Co	86.9
New Jersey	Camden Co	91.9
New Jersey	Gloucester Co	91.8
New Jersey	Hunterdon Co	89.0
New Jersey	Mercer Co	95.6
New Jersey	Middlesex Co	92.4
New Jersey	Monmouth Co	86.6
New Jersey	Morris Co	86.5
New Jersey	Ocean Co	100.5
New York	Erie Co	87.3
New York	Richmond Co	87.3
New York	Suffolk Co	91.1
New York	Westchester Co	85.3
Ohio	Geauga Co	87.1
Pennsylvania	Bucks Co	94.7
Pennsylvania	Chester Co	85.7
Pennsylvania	Montgomery Co	88.0
Pennsylvania	Philadelphia Co	90.3
Rhode Island	Kent Co	86.4
Texas	Denton Co	87.4
Texas	Galveston Co	85.1
Texas	Harris Co	97.9
Texas	Jefferson Co	85.6
Texas	Tarrant Co	87.8
Virginia	Arlington Co	86.2
Virginia	Fairfax Co	85.7
Wisconsin	Kenosha Co	91.3
Wisconsin	Ozaukee Co	86.2

TABLE VI–5.—PROJECTED 2010 BASE CASE 8-HOUR OZONE NONATTAINMENT COUNTIES AND CONCENTRATIONS (PPB)—Continued

State	County	2010 Base
Wisconsin	Sheboygan Co	88.3

TABLE VI–6.—PROJECTED 2015 BASE CASE 8-HOUR OZONE NONATTAINMENT COUNTIES AND CONCENTRATIONS (PPB)

State	County	2015 Base
Connecticut	Fairfield Co	91.4
Connecticut	Middlesex Co	89.1
Connecticut	New Haven Co	89.8
Maryland	Anne Arundel Co	86.0
Maryland	Cecil Co	86.9
Maryland	Harford Co	90.6
Michigan	Macomb Co	85.1
New Jersey	Bergen Co	85.7
New Jersey	Camden Co	89.5
New Jersey	Gloucester Co	89.6
New Jersey	Hunterdon Co	86.5
New Jersey	Mercer Co	93.5
New Jersey	Middlesex Co	89.8
New Jersey	Ocean Co	98.0
New York	Erie Co	85.2
New York	Suffolk Co	89.9
Pennsylvania	Bucks Co	93.0
Pennsylvania	Montgomery Co	86.5
Pennsylvania	Philadelphia Co	88.9
Texas	Harris Co	97.3
Texas	Jefferson Co	85.0
Wisconsin	Kenosha Co	89.4

C. How Did EPA Assess Interstate Contributions to Nonattainment?

1. $PM_{2.5}$ Contribution Modeling Approach

For the proposed rule, EPA performed State-by-State zero-out modeling to quantify the contribution from emissions in each State to future $PM_{2.5}$ nonattainment in other States and to determine whether that contribution meets the air quality prong (*i.e.*, before considering cost) of the "contribute significantly" test. The zero-out modeling technique provides an estimate of downwind impacts by comparing the model predictions from the 2010 base case to the predictions from a run in which all anthropogenic SO_2 and NO_X emissions are removed from specific States. Counties forecast to be nonattainment for $PM_{2.5}$ in the proposal 2010 base case were used as receptors for quantifying interstate contributions of $PM_{2.5}$. For each State-by-State zero-out run we projected the annual average $PM_{2.5}$ concentration at each receptor using the proposed SMAT technique, as described in the NPR AQMTSD. The contribution from an upwind State to nonattainment at a given downwind receptor was determined by calculating the difference in $PM_{2.5}$ concentration between the 2010 base case and the zero-out run at that receptor. We followed this process for each State-by-State zero-out run and each receptor. For each upwind State, we identified the largest contribution from that State to a downwind nonattainment receptor in order to determine the magnitude of the maximum downwind contribution from each State. The maximum downwind contribution was proposed as the metric for determining whether or not the contribution was significant. As described in section III, EPA proposed, in the alternative, a criterion of 0.10 $\mu g/m^3$ and 0.15 $\mu g/m^3$ for determining whether emissions in a State make a significant contribution (before considering cost) to $PM_{2.5}$ nonattainment in another State. Details on these procedures can be found in the NPR AQMTSD.

Comments: Commenters questioned the use of zero-out modeling and said that EPA should support the development of a source apportionment model for $PM_{2.5}$ contributions. The commenter recommended that EPA delay the final rule until such a technique can be used. Another commenter provided results of a sulfate source apportionment technique currently under development along with modeling results which showed that the zero-out technique and source apportionment for sulfate provide similar results in terms of the magnitude and extent of downwind impacts. The commenter noted that the results suggest that zero-out modeling may somewhat underestimate the transport of sulfate.

Response: The EPA continues to believe that the zero-out technique is a credible method for quantifying interstate $PM_{2.5}$ contributions. This is supported by a commenter's results showing that the zero-out technique and source apportionment appear to give similar results. We accept the commenter's modeling for sulfate source apportionment results which indicate that the zero-out technique does not overestimate interstate transport. Moreover, EPA rejects the notion that we should delay needed reductions while we await alternative assessment techniques.

2. 8-Hour Ozone Contribution Modeling Approach

In the proposal, EPA quantified the impact of emissions from specific upwind States on 8-hour ozone concentrations in projected downwind nonattainment areas. The procedures we followed to assess interstate ozone contribution for the proposal analysis are summarized below. We are using these same procedures along with the updated CAM_X modeling platform, as

described in section VI.A., to assess ozone contributions for today's rule. Details on these procedures can be found in the NFR AQMTSD.

We applied two different modeling techniques, zero-out and source apportionment, to assess the contributions of emissions in upwind States on 8-hour ozone nonattainment in downwind States. The outputs of the two modeling techniques were evaluated in terms of three key contribution factors to determine which States make a significant contribution to downwind ozone nonattainment as described in section VI.B.2. The zero-out and source apportionment modeling techniques provide different, but equally valid, technical approaches to quantifying the downwind impact of emissions from upwind States. The zero-out modeling analysis provides an estimate of downwind impacts by comparing the model predictions from the 2010 base case and the predictions from a model run in which all anthropogenic NO_X and VOC emissions are removed from specific States. The source apportionment modeling quantifies downwind impacts by tracking and allocating the amounts of ozone formed from man-made NO_X and VOC emissions in upwind States. Because large portions of the six States along the western border of the modeling domain [102] are outside the area covered by our modeling, EPA did not analyze the contributions to downwind ozone nonattainment for these States.

In the analysis done at proposal, EPA considered three fundamental factors for evaluating whether emissions in an upwind State make large and/or frequent contributions to downwind nonattainment: (1) The magnitude of the contribution; (2) the frequency of the contribution; and (3) the relative amount of the contribution when compared against contributions from other areas. The factors are the basis for several metrics that can be used to assess a particular impact. The metrics used in this analysis were the same as those used in the NO_X SIP Call.

Within these three factors, eight specific metrics were calculated to assess the contribution of each of the 31 States to the residual nonattainment counties. For the zero-out modeling, EPA considered: (1) The maximum contribution (magnitude); (2) the number and percentage of exceedances with contributions in certain concentration ranges (frequency); (3) the total contribution relative to the total exceedance level ozone in the receptor area (relative amount); and (4) the population-weighted total contribution relative to the total population-weighted exceedance level ozone in the receptor area (relative amount). For the source apportionment modeling EPA considered: (5) The maximum contribution (magnitude); (6) the highest daily average contribution (magnitude); (7) the number and percentages of exceedances with contributions in certain concentration ranges (frequency); and (8) the total average contribution to exceedance ozone in the downwind area (relative amount). The values for these metrics were calculated using only those periods during which the model predicted 8-hour average ozone concentrations greater than or equal to 85 ppb in at least one of the model grid cells associated with the receptor county in the 2010 base case. Grid cells were linked to a specific nonattainment county if any part of the grid cell covered any portion of the projected 2010 nonattainment county.

The first step in evaluating the contribution factors was to screen out linkages for which the contributions were clearly small. This initial screening was based on two criteria: (1) The maximum contribution had to be greater than or equal to 2 ppb from either of the two modeling techniques; and (2) the total average contribution to exceedance of ozone in the downwind area had to be greater than 1 percent. If either screening test was not met, then the linkage was not considered significant. Those linkages that had contributions which exceeded the screening criteria were evaluated further in steps 2 through 4.

In step 2, we evaluated the contributions in each linkage based on the zero-out modeling and in step 3 we evaluated the contributions in each linkage based on the source apportionment modeling. In step 4, we considered the results of both step 2 and step 3 to determine which of the linkages were significant. For both techniques, EPA determined whether the linkage is significant by evaluating the magnitude, frequency, and relative amount of the contributions. Each upwind State that made relatively large and/or frequent contributions to nonattainment in the downwind area, based on these factors, was considered to contribute significantly to nonattainment in the downwind area.

The EPA believes that each of the factors provides an independent measure of contribution, however, there had to be at least two different factors that indicated large and/or frequent contributions in order for the linkage to be found significant. In this regard, the finding of a significant contribution for an individual linkage was not based on any single factor. Further, each of the modeling approaches had to show at least one indicator of a large and/or frequent contribution in order for the linkage to be found significant. The EPA received several general comments on the procedures for assessing interstate contributions of ozone to projected residual nonattainment areas, as discussed below.

Comment: A commenter opposed the use of population-weighted metrics to determine whether an upwind State's impact on a location in another State is significant.

Response: The commenter's concern was that transport contributions to rural areas with low populations were not being weighted appropriately. This is not a valid concern because the relative contribution factor from the zero-out modeling is presumed to be met if either of the two criteria (population-weighted, or non-population-weighted) show large contributions.

Comment: Also, EPA received a specific comment on a certain linkage that was deemed to be significant in the analysis done to support the NPR. The commenter objected to the conclusion that Mississippi significantly contributes to residual ozone exceedances near Memphis. The objection resulted from issues with grid resolution, episode selection, and the fact that the zero-out and source apportionment modeling for Mississippi included some emissions from Tennessee and Arkansas due to the irregular State boundaries.

Response: As noted in section VI.B.2, Crittenden County, AR is no longer projected to be a nonattainment area in the 2010 base case. As a result, the issue of Mississippi's contribution to ozone in the Memphis area is moot.

D. What Are the Estimated Interstate Contributions to $PM_{2.5}$ and 8-Hour Ozone Nonattainment?

1. Results of $PM_{2.5}$ Contribution Modeling

In this section, we present the interstate contributions from emissions in upwind States to $PM_{2.5}$ nonattainment in downwind nonattainment counties. States which contribute 0.2 $\mu g/m^3$ or more to $PM_{2.5}$ nonattainment in another State are determined to contribute significantly (before considering cost). We calculated the interstate $PM_{2.5}$ contributions using the State-by-State zero-out modeling technique, as indicated above in section VI.C.1. This technique is described in

[102] The six States are Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas.

the NFR AQMTSD. We performed zero-out modeling using CMAQ for each of 37 States individually (*i.e.*, Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland combined with the District of Columbia, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin).

We calculated each State's contribution to $PM_{2.5}$ in each of the 62 counties that are projected to be nonattainment in the 2010 base case (*i.e.*, "modeled" nonattainment) and are also "monitored" nonattainment in 2001–2003, as described in section VI.B.1.b. The maximum contribution from each upwind State to downwind $PM_{2.5}$ nonattainment is provided in Table VI–7. The contributions from each State to nonattainment in each nonattainment county are provided in the NFR AQMTSD. Based on the State-by-State modeling, there are 23 States and the District of Columbia [103] which contribute 0.2 $\mu g/m^3$ or more to downwind $PM_{2.5}$ nonattainment (Alabama, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin). In Table VI–8, we provide a list of the downwind nonattainment counties to which each upwind State contributes 0.2 $\mu g/m^3$ or more (*i.e.*, the upwind State-to-downwind nonattainment "linkages").

TABLE VI–7.—MAXIMUM DOWNWIND $PM_{2.5}$ CONTRIBUTION ($\mu G/M^3$) FOR EACH OF 37 STATES

Upwind State	Maximum downwind contribution
Alabama	0.98
Arkansas	0.19
Connecticut	<0.05
Delaware	0.14
Florida	0.45
Georgia	1.27
Illinois	1.02
Indiana	0.91
Iowa	0.28
Kansas	0.11
Kentucky	0.90
Louisiana	0.25
Maine	<0.05
Maryland/DC	0.69
Massachusetts	0.07
Michigan	0.62
Minnesota	0.21
Mississippi	0.23
Missouri	1.07
Nebraska	0.07
New Hampshire	<0.05
New Jersey	0.13
New York	0.34
North Carolina	0.31
North Dakota	0.11
Ohio	1.67
Oklahoma	0.12
Pennsylvania	0.89
Rhode Island	<0.05
South Carolina	0.40
South Dakota	<0.05
Tennessee	0.65
Texas	0.29
Vermont	<0.05
Virginia	0.44
West Virginia	0.84
Wisconsin	0.56

TABLE VI–8.—UPWIND STATE-TO-DOWNWIND NONATTAINMENT COUNTY SIGNIFICANT "LINKAGES" FOR $PM_{2.5}$.

Upwind states	Total linkages	Downwind counties			
AL	21	Bibb GA	Cabell WV	Catawba NC	Clark IN.
		Clarke GA	Clayton GA	Cobb GA	Davidson NC.
		DeKalb GA	Dubois IN	Fayette KY	Floyd GA.
		Fulton GA	Hamilton OH	Hamilton TN	Jefferson KY.
		Knox TN	Lawrence OH	Scioto OH	Vanderburgh IN.
		Walker GA.			
FL	7	Bibb GA	Clarke GA	Clayton GA	Cobb GA.
		DeKalb GA	Jefferson AL	Russell AL.	
GA	17	Butler OH	Cabell WV	Catawba NC	Clark IN.
		Davidson NC	Fayette KY	Hamilton OH	Hamilton TN.
		Jefferson AL	Jefferson KY	Kanawha WV	Knox TN.
		Lawrence OH	Montgomery OH	Russell AL	Scioto OH.
		Vanderburgh IN.			
IL	23	Allegheny PA	Butler OH	Cabell WV	Clark IN.
		Cuyahoga OH	Dubois IN	Fayette KY	Franklin OH.
		Hamilton OH	Hamilton TN	Jefferson AL	Jefferson KY.
		Kanawha WV	Lake IN	Lawrence OH	Mahoning OH.
		Marion IN	Montgomery OH	Scioto OH	Stark OH.
		Summit OH	Vanderburgh IN	Wayne MI	
IN	46	Allegheny PA	Beaver PA	Berkeley WV	Bibb GA.
		Brooke WV	Butler OH	Cabell WV	Cambria PA.
		Catawba NC	Clarke GA	Clayton GA	Cobb GA.
		Cook IL	Cuyahoga OH	Davidson NC	DeKalb GA.
		Fayette KY	Floyd GA	Franklin OH	Fulton GA.
		Hamilton OH	Hamilton TN	Hancock WV	Jefferson AL.
		Jefferson KY	Jefferson OH	Kanawha WV	Knox TN.

[103] As noted above, we combined Maryland and the District of Columbia as a single entity in our contribution modeling. This is a logical approach because of the small size of the District of Columbia and, hence, its emissions and its close proximity to Maryland. Under our analysis, Maryland and the District of Columbia are linked as significant contributors to the same downwind nonattainment counties. The EPA received no adverse comment on this approach. We also considered these entities separately, and in view of the close proximity of these two areas we believe that Maryland is linked as a significant contributor to nonattainment in the District of Columbia and that the District of Columbia is linked as a significant contributor to nonattainment in Maryland.

TABLE VI–8.—UPWIND STATE-TO-DOWNWIND NONATTAINMENT COUNTY SIGNIFICANT "LINKAGES" FOR $PM_{2.5}$.—Continued

		Lancaster PA	Lawrence OH	Madison IL	Mahoning OH.
		Marion WV	Marshall WV	Montgomery OH	Ohio WV.
		Russell AL	St. Clair IL	Scioto OH	Stark OH.
		Summit OH	Walker GA	Wayne MI	Washington PA.
		Westmoreland PA	Wood WV.		
IA	5	Cook IL	Lake IN	Madison IL	Marion IN.
		St. Clair IL.			
KY	35	Allegheny PA	Butler OH	Cabell WV	Catawba NC.
		Clark IN	Clarke GA	Cobb GA	Cuyahoga OH.
		Davidson NC	Dubois IN	Floyd GA	Franklin OH.
		Hamilton OH	Hamilton TN	Jefferson AL	Jefferson OH.
		Kanawha WV	Knox TN	Lawrence OH	Madison IL.
		Mahoning OH	Marion IN	Marion WV	Marshall WV.
		Montgomery OH	Ohio WV	St. Clair IL	Scioto OH.
		Stark OH	Summit OH	Vanderburgh IN	Walker GA.
		Washington PA	Westmoreland PA	Wood WV..	
LA	2	Jefferson AL	Russell AL.		
MD/DC	13	Berkeley WV	Berks PA	Cambria PA	Dauphin PA.
		Delaware PA	District of Columbia	Lancaster PA	New Castle DE.
		New York NY	Philadelphia PA	Union NJ	Westmoreland PA.
		York PA.			
MI	36	Allegheny PA	Beaver PA	Berks PA	Brooke WV.
		Butler OH	Cabell WV	Cambria PA	Clark IN.
		Cook IL	Cuyahoga OH	Dauphin PA	Delaware PA.
		Fayette KY	Franklin OH	Hamilton OH	Hancock WV.
		Jefferson OH	Lake IN	Lancaster PA	Lawrence OH.
		Mahoning OH	Marion IN	Marion WV	Marshall WV.
		Montgomery OH	New Castle DE	Ohio WV	Philadelphia PA.
		Scioto OH	Stark OH	Summit OH	Union NJ.
		Washington PA	Westmoreland PA	Wood WV	York PA.
MN	2	Cook IL	Lake IN.		
MO	9	Clark IN	Cook IL	Dubois IN	Jefferson KY.
		Lake IN	Madison IL	Marion IN	St. Clair IL.
		Vanderburgh IN..			
MS	1	Jefferson AL.			
NY	5	Berks PA	Lancaster PA	New Castle DE	New Haven CT.
		Union NJ.			
NC	7	Anne Arundel MD	Baltimore City	Bibb GA	Clarke GA.
		District of Columbia	Kanawha WV	Knox TN..	
OH	51	Anne Arundel MD	Allegheny PA	Baltimore City MD	Beaver PA.
		Berkeley WV	Berks PA	Bibb GA	Brooke WV.
		Cabell WV	Cambria PA	Catawba NC	Clark IN.
		Clarke GA	Clayton GA	Cobb GA	Cook IL.
		Dauphin PA	Davidson NC	DeKalb GA	Delaware PA.
		District of Columbia	Dubois IN	Fayette KY	Floyd GA.
		Fulton GA	Hamilton TN	Hancock WV	Jefferson AL.
		Jefferson KY	Kanawha-WV	Knox TN	Lake IN.
		Lancaster PA	Madison IL	Marion IN	Marion WV.
		Marshall WV	New Castle DE	New York NY	Ohio WV.
		Philadelphia PA	Russell AL	St. Clair IL	Union NJ.
		Vanderburgh IN	Walker GA	Washington PA	Wayne MI.
		Westmoreland PA	Wood WV	York PA.	
PA	25	Anne Arundel MD	Baltimore City	Berkeley WV	Brooke WV.
		Cabell WV	Catawba NC	Clarke GA	Cuyahoga OH.
		Davidson NC	District of Columbia	Hancock WV	Jefferson OH.
		Kanawha WV	Lawrence OH	Mahoning OH	Marion WV.
		Marshall WV	New Castle DE	New York NY	Ohio WV.
		Stark OH	Summit OH	Union NJ	Wayne MI.
		Wood WV.			
SC	9	Bibb GA	Catawba NC	Clarke GA	Clayton GA.
		Cobb GA	Davidson NC	DeKalb GA	Fulton GA.
		Russell AL.			
TN	23	Bibb GA	Butler OH	Cabell WV	Catawba NC.
		Clark IN	Clarke GA	Clayton GA	Cobb GA.
		Davidson NC	DeKalb GA	Dubois IN	Fayette KY.
		Floyd GA	Fulton GA	Hamilton OH	Jefferson AL.
		Jefferson KY	Kanawha WV	Lawrence OH	Russell AL.
		Scioto OH	Vanderburgh TN	Walker GA.	
TX	2	Madison IL	St Clair IL.		
VA	13	Anne Arundel MD	Baltimore City MD	Berkeley WV	Berks PA.
		Catawba NC	Dauphin PA	Davidson NC	Delaware PA.
		District of Columbia	Lancaster PA	New Castle DE	Philadelphia PA.

TABLE VI–8.—UPWIND STATE-TO-DOWNWIND NONATTAINMENT COUNTY SIGNIFICANT "LINKAGES" FOR $PM_{2.5}$.—Continued

		York PA.			
WV	33	Anne Arundel MD	Allegheny PA	Baltimore City MD	Beaver PA.
		Berks PA	Butler OH	Cambria PA	Catawba NC.
		Clarke GA	Cuyahoga OH	Dauphin PA	Davidson NC.
		Delaware PA	District of Columbia	Fayette KY	Franklin OH.
		Hamilton OH	Jefferson OH	Knox TN	Lancaster PA.
		Lawrence OH	Mahoning OH	Montgomery OH	New Castle DE.
		New York NY	Philadelphia PA	Scioto OH	Stark OH.
		Summit OH	Union NJ	Washington PA	Westmoreland PA.
		York PA.			
WI	4	Cook IL	Lake IN	Marion IN	Wayne MI.

2. Results of 8-Hour Ozone Contribution Modeling

In this section, we present the results of air quality modeling to determine which upwind States contribute significantly (before considering cost) to 8-hour ozone nonattainment in downwind States. The analytical procedures to determine which States make a significant contribution are based on the zero-out and source apportionment modeling techniques using CAM_x, as described in section VI.C.2 and in the NFR AQMTSD. We performed ozone contribution modeling using both of these techniques for 31 States in the East and the District of Columbia (*i.e.*, Alabama, Arkansas, Connecticut, Delaware, Georgia, Florida, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maine, Maryland combined with the District of Columbia, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin).

We evaluated the interstate ozone contributions from each of the 31 upwind States and the District of Columbia to each of the 40 counties that are projected to be nonattainment in the 2010 base case (*i.e.*, "modeled" nonattainment) and are also "monitored" nonattainment in 2001–2003, as described in section VI.B.2.b. We analyzed the contributions from upwind States to these counties in terms of various metrics, described above and in more detail in the NFR AQMTSD.

Based on the State-by-State modeling, there are 25 States and the District of Columbia [104] which make a significant contribution (before considering cost) to 8-hour ozone nonattainment in downwind States (*i.e.*, Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin). In Table VI–9, we provide a list of the downwind nonattainment counties to which each upwind State makes a significant contribution (*i.e.*, the upwind State-to-downwind nonattainment "linkages").

TABLE VI–9.—UPWIND STATE-TO-DOWNWIND NONATTAINMENT COUNTY SIGNIFICANT "LINKAGES" FOR 8-HOUR OZONE.

Upwind states	Total linkages	Downwind counties			
AL	3	Fulton GA	Harris TX	Jefferson TX.	
AR	3	Galveston TX	Harris TX	Jefferson TX.	
CT	2	Kent RI	Suffolk NY.		
DE	13	Bucks PA	Camden NJ	Chester PA	Gloucester NJ.
		Hunterdon NJ	Mercer NJ	Middlesex NJ	Monmouth NJ.
		Montgomery PA	Morris NJ	Ocean NJ	Philadelphia PA.
		Suffolk NY.			
FL	1	Fulton GA			
IA	3	Kenosha WI	Macomb MI	Sheboygan WI.	
IL	5	Geauga OH	Kenosha WI	Macomb MI	Ozaukee WI.
		Sheboygan WI.			
IN	5	Geauga OH	Kenosha WI	Macomb MI	Ozaukee WI.
		Sheboygan WI..			
KY	3	Fulton GA	Geauga OH	Macomb MI.	
LA	3	Galveston TX	Harris TX	Jefferson TX.	
MA	2	Kent RI	Middlesex NJ.		
MD/DC	23	Arlington VA	Bergen NJ	Bucks PA	Camden NJ.
		Chester PA	District of Columbia	Erie NY	Fairfax VA.
		Fairfield CT	Gloucester NJ	Hunterton NJ	Mercer NJ.
		Middlesex NJ	Monmouth NJ	Montgomery PA	Morris NJ.

[104] As noted above, we combined Maryland and the District of Columbia as a single entity in our contribution modeling. This is a logical approach because of the small size of the District of Columbia and, hence, its emissions and its close proximity to Maryland. Under our analysis, Maryland and the District of Columbia are linked as significant contributors to the same downwind nonattainment counties. The EPA received no adverse comment on this approach. We also considered these entities separately, and in view of the close proximity of these two areas we believe that Maryland is linked as a significant contributor to nonattainment in the District of Columbia and that the District of Columbia is linked as a significant contributor to nonattainment in Maryland.

TABLE VI–9.—UPWIND STATE-TO-DOWNWIND NONATTAINMENT COUNTY SIGNIFICANT "LINKAGES" FOR 8-HOUR OZONE.—Continued

		New Castle DE	New Haven CT	Ocean NJ	Philadelphia PA.
		Richmond NY	Suffolk NY	Westchester NY	
MI	19	Anne Arundel MD	Bergen NJ	Bucks PA	Camden NJ.
		Cecil MD	Chester PA	Erie NY	Geauga OH.
		Gloucester NJ	Kent MD	Mercer NJ	Middlesex NJ.
		Monmouth NJ	Morris NJ	New Castle DE	Ocean NJ.
		Philadelphia PA	Richmond NY	Suffolk NY	
MO	4	Geauga OH	Kenosha WI	Ozaukee WI	Sheboygan WI.
MS	2	Harris TX	Jefferson TX.		
NC	8	Anne Arundel MD	Fulton GA	Harford MD	Kent MD.
		Newcastle DE	Suffolk NY	Bucks PA	Chester PA.
NJ	10	Erie NY	Fairfield CT	Kent RI	Middlesex CT.
		Montgomery PA	New Haven CT	Philadelphia PA	Richmond NY.
		Suffolk NY	Westchester NY.		
NY	9	Fairfield CT	Kent RI	Mercer NJ	Middlesex CT.
		Middlesex NJ	Monmouth NJ	Morris NJ	New Haven CT.
		Ocean NJ.			
		Anne Arundel MD	Arlington VA	Bergen NJ	Bucks PA.
OH	28	Camden NJ	Cecil MD	Chester PA	District of Columbia.
		Fairfax VA	Fairfield CT	Gloucester NJ	Harford MD.
		Hunterton NJ	Kent MD	Kent RI	Macomb MI.
		Mercer NJ	Middlesex CT	Middlesex NJ	Monmouth NJ.
		Montgomery PA	Morris NJ	New Castle DE	New Haven CT.
		Ocean NJ	Philadelphia PA	Suffolk NY	Westchester NY.
PA	25	Anne Arundel MD	Arlington VA	Bergen NJ	Camden NJ.
		Cecil MD	District of Columbia	Erie NY	Fairfax VA.
		Fairfield CT	Gloucester NJ	Harford MD	Hunterton NJ.
		Kent MD	Kent RI	Mercer NJ	Middlesex CT.
		Middlesex NJ	Monmouth NJ	Morris NJ	New Castle DE.
		New Haven CT	Ocean NJ	Richmond NY	Suffolk NY.
		Westchester NY.			
SC	1	Fulton GA.			
TN	1	Fulton GA.			
VA	26	Anne Arundel MD	Bergen NJ	Bucks PA	Camden NJ.
		Cecil MD	Chester PA	District of Columbia	Erie NY.
		Fairfield CT	Gloucester NJ	Harford MD	Hunterton NJ.
		Kent MD	Kent RI	Mercer NJ	Middlesex CT.
		Middlesex NJ	Monmouth NJ	Morris NJ	New Castle DE.
		New Haven CT	Ocean NJ	Philadelphia PA	Richmond NY.
		Suffolk NY	Westchester NY.		
WI	2	Erie NY	Macomb MI.		
WV	25	Anne Arundel MD	Bergen NJ	Bucks PA	Camden NJ.
		Cecil MD	Chester PA	Fairfax VA	Fairfield CT.
		Fulton GA	Gloucester NJ	Harford MD	Hunterton NJ.
		Kent MD	Mercer NJ	Middlesex NJ	Monmouth NJ.
		Montgomery PA	Morris NJ	New Castle DE	New Haven CT.
		Ocean NJ	Philadelphia PA	Richmond NY	Suffolk NY.
		Westchester NY.			

E. What are the Estimated Air Quality Impacts of the Final Rule?

In this section, we describe the air quality modeling performed to determine the projected impacts on $PM_{2.5}$ and 8-hour ozone of the SO_2 and NO_X emissions reductions in the control region modeled. The modeling used to estimate the air quality impact of these reductions assumes annual SO_2 and NO_X controls for Arkansas, Delaware, and New Jersey in addition to the 23-States plus the District of Columbia. Since Arkansas, Delaware, and New Jersey are not included in the final CAIR region for $PM_{2.5}$, the modeled estimated impacts on $PM_{2.5}$ are overstated for today's final rule. However, EPA plans to include Delaware and New Jersey in the CAIR region for $PM_{2.5}$ through a separate regulatory process. Thus, the estimates are reflective of the total impacts expected for CAIR assuming Delaware and New Jersey will become part of the annual SO_2 and NO_X trading programs.

As discussed in section IV, EPA analyzed the impacts of the regional emissions reductions in both 2010 and 2015. These impacts are quantified by comparing air quality modeling results for the regional control scenario to the modeling results for the corresponding 2010 and 2015 base case scenarios. The 2010 and 2015 emissions reductions from the power generation sector include a two-phase cap and trade program covering the control region modeled (*i.e.*, the 23 States plus the District of Columbia included in today's rule and Arkansas, Delaware, and New Jersey).[105] Phase 1 of the regional strategy (the 2010 reductions) is forecast to reduce total EGU SO_2 emissions[106] in

[105] In addition to the SO_2 and NO_X reductions in these States, we also modeled summer-season only EGU NO_X controls for Connecticut and Massachusetts, which significantly contribute to ozone, but not to $PM_{2.5}$ nonattainment in downwind areas.

[106] For the purposes of this discussion, we have calculated the percent reduction in total EGU

the control region modeled by 40 percent in 2010. Phase 2 (the 2015 reductions) is forecast to provide a 48 percent reduction in EGU SO_2 emissions compared to the base case in 2015. When fully implemented post-2015, we expect this rule to result in more than a 70 percent reduction in EGU SO_2 emissions compared to current emissions levels. The reductions at full implementation occur post-2015 due to the existing title IV bank of SO_2 allowances, which can be used under the CAIR program. The net effect of the strategy on total SO_2 emissions in the control region modeled considering all sources of emissions, is a 28 percent reduction in 2010 and a 32 percent reduction in 2015.

For NO_X, Phase 1 of the strategy is forecast to reduce total EGU emissions by 44 percent in 2009. Total NO_X emissions across the control region (*i.e.*, includes all sources) are 11 percent lower in the 2010 CAIR scenario compared to the emissions in the 2010 base case. In Phase 2, EGU NO_X emissions are projected to decline by 54 percent in 2015 in this region. Total NO_X emissions from all anthropogenic sources are projected to be reduced by 14 percent in 2015. The percent change in emissions by State for SO_2 and NO_X in 2010 and 2015 for the regional control strategy modeled are provided in the NFR EITSD.

1. Estimated Impacts on $PM_{2.5}$ Concentrations and Attainment

We determined the impacts on $PM_{2.5}$ of the CAIR regional strategy by running the CMAQ model for this strategy and comparing the results to the $PM_{2.5}$ concentrations predicted for the 2010 and 2015 base cases. In brief, we ran the CMAQ model for the regional strategy in both 2010 and 2015. The model predictions were used to project future $PM_{2.5}$ concentrations for CAIR in 2010 and 2015 using the SMAT technique, as described in section VI.B.1. We compared the results of the 2010 and 2015 regional strategy modeling to the corresponding results from the 2010 and 2015 base cases to quantify the expected impacts of CAIR.

The impacts of the SO_2 and NO_X emissions reductions expected from CAIR on $PM_{2.5}$ in 2010 and 2015 are provided in Table VI–10 and Table VI–11, respectively. In these tables, counties shown in bold/italics are projected to come into attainment with CAIR.

TABLE VI–10.—PROJECTED $PM_{2.5}$ CONCENTRATIONS ($\mu G/M^3$) FOR THE 2010 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2010

State	County	2010 Base case	2010 CAIR	Impact of CAIR
Alabama	DeKalb Co	15.23	13.97	−1.26
Alabama	Jefferson Co	18.57	17.46	−1.11
Alabama	Montgomery Co	15.12	14.10	−1.02
Alabama	Morgan Co	15.29	14.11	−1.18
Alabama	Russell Co	16.17	15.15	−1.02
Alabama	Talladega Co	15.34	14.00	−1.34
Delaware	New Castle Co	16.56	14.84	−1.72
District of Columbia		15.84	13.68	−2.16
Georgia	Bibb Co	16.27	15.17	−1.10
Georgia	Clarke Co	16.39	14.96	−1.43
Georgia	Clayton Co	17.39	16.29	−1.10
Georgia	Cobb Co	16.57	15.35	−1.22
Georgia	DeKalb Co	16.75	15.70	−1.05
Georgia	Floyd Co	16.87	15.87	−1.00
Georgia	Fulton Co	18.02	16.98	−1.04
Georgia	Hall Co	15.60	14.28	−1.32
Georgia	Muscogee Co	15.65	14.57	−1.08
Georgia	Richmond Co	15.68	14.64	−1.04
Georgia	Walker Co	15.43	14.22	−1.21
Georgia	Washington Co	15.31	14.22	−1.09
Georgia	Wilkinson Co	16.27	15.22	−1.05
Illinois	Cook Co	17.52	16.88	−0.64
Illinois	Madison Co	16.66	15.96	−0.70
Illinois	St. Clair Co	16.24	15.54	−0.70
Indiana	Clark Co	16.51	15.15	−1.36
Indiana	Dubois Co	15.73	14.37	−1.36
Indiana	Lake Co	17.26	16.48	−0.78
Indiana	Marion Co	16.83	15.54	−1.29
Indiana	Vanderburgh Co	15.54	14.26	−1.28
Kentucky	Boyd Co	15.23	13.38	−1.85
Kentucky	Bullitt Co	15.10	13.67	−1.43
Kentucky	Fayette Co	15.95	14.17	−1.78
Kentucky	Jefferson Co	16.71	15.44	−1.27
Kentucky	Kenton Co	15.30	13.72	−1.58
Maryland	Anne Arundel Co	15.26	12.98	−2.28
Maryland	Baltimore city	16.96	14.88	−2.08
Michigan	Wayne Co	19.41	18.23	−1.18
Missouri	St. Louis City	15.10	14.40	−0.70
New Jersey	Union Co	15.05	13.60	−1.45
New York	New York Co	16.19	14.95	−1.24
North Carolina	Catawba Co	15.48	14.07	−1.41
North Carolina	Davidson Co	15.76	14.36	−1.40

emissions which includes units greater than and less than 25 MW.

TABLE VI–10.—PROJECTED $PM_{2.5}$ CONCENTRATIONS ($\mu g/M^3$) FOR THE 2010 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2010—Continued

State	County	2010 Base case	2010 CAIR	Impact of CAIR
North Carolina	Mecklenburg Co	15.22	13.92	−1.30
Ohio	Butler Co	16.45	15.03	−1.42
Ohio	Cuyahoga Co	18.84	17.11	−1.73
Ohio	Franklin Co	16.98	15.13	−1.85
Ohio	Hamilton Co	18.23	16.61	−1.62
Ohio	Jefferson Co	17.94	15.64	−2.30
Ohio	Lawrence Co	16.10	14.11	−1.99
Ohio	Mahoning Co	15.39	13.40	−1.99
Ohio	Montgomery Co	15.41	13.83	−1.58
Ohio	Scioto Co	18.13	15.98	−2.15
Ohio	Stark Co	17.14	15.08	−2.06
Ohio	Summit Co	16.47	14.69	−1.78
Ohio	Trumbull Co	15.28	13.50	−1.78
Pennsylvania	Allegheny Co	20.55	18.01	−2.54
Pennsylvania	Beaver Co	15.78	13.61	−2.17
Pennsylvania	Berks Co	15.89	13.56	−2.33
Pennsylvania	Cambria Co	15.14	12.72	−2.42
Pennsylvania	Dauphin Co	15.17	12.88	−2.29
Pennsylvania	Delaware Co	15.61	13.94	−1.67
Pennsylvania	Lancaster Co	16.55	14.09	−2.46
Pennsylvania	Philadelphia Co	16.65	14.98	−1.67
Pennsylvania	Washington Co	15.23	12.99	−2.24
Pennsylvania	Westmoreland Co	15.16	12.60	−2.56
Pennsylvania	York Co	16.49	14.20	−2.29
Tennessee	Davidson Co	15.36	14.26	−1.10
Tennessee	Hamilton Co	16.89	15.57	−1.32
Tennessee	Knox Co	17.44	16.16	−1.28
Tennessee	Sullivan Co	15.32	14.01	−1.31
West Virginia	Berkeley Co	15.69	13.43	−2.26
West Virginia	Brooke Co	16.63	14.42	−2.21
West Virginia	Cabell Co	17.03	15.08	−1.95
West Virginia	Hancock Co	17.06	14.89	−2.17
West Virginia	Kanawha Co	17.56	15.27	−2.29
West Virginia	Marion Co	15.32	12.90	−2.42
West Virginia	Marshall Co	15.81	13.46	−2.35
West Virginia	Ohio Co	15.14	12.81	−2.33
West Virginia	Wood Co	16.66	14.14	−2.52

TABLE VI–11.—PROJECTED $PM_{2.5}$ CONCENTRATIONS ($\mu g/M^3$) FOR THE 2015 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2015

State	County	2015 Base case	2015 CAIR	Impact of CAIR
Alabama	DeKalb Co	15.24	13.46	−1.78
Alabama	Jefferson Co	18.85	17.36	−1.49
Alabama	Montgomery Co	15.24	13.87	−1.37
Alabama	Morgan Co	15.26	13.85	−1.41
Alabama	Russell Co	16.10	14.66	−1.44
Alabama	Talladega Co	15.22	13.35	−1.87
Delaware	New Castle Co	16.47	14.41	−2.06
District of Columbia		15.57	13.11	−2.46
Georgia	Bibb Co	16.41	14.83	−1.58
Georgia	Chatham Co	15.06	13.86	−1.20
Georgia	Clarke Co	16.15	14.10	−2.05
Georgia	Clayton Co	17.46	15.85	−1.61
Georgia	Cobb Co	16.51	14.67	−1.84
Georgia	DeKalb Co	16.82	15.29	−1.53
Georgia	Floyd Co	17.33	15.79	−1.54
Georgia	Fulton Co	18.00	16.47	−1.53
Georgia	Hall Co	15.36	13.48	−1.88
Georgia	Muscogee Co	15.58	14.06	−1.52
Georgia	Richmond Co	15.76	14.23	−1.53
Georgia	Walker Co	15.37	13.65	−1.72
Georgia	Washington Co	15.34	13.67	−1.67
Georgia	Wilkinson Co	16.54	15.01	−1.53
Illinois	Cook Co	17.71	16.95	−0.76
Illinois	Madison Co	16.90	16.07	−0.83
Illinois	St. Clair Co	16.49	15.64	−0.85

TABLE VI–11.—PROJECTED $PM_{2.5}$ CONCENTRATIONS (μG/M³) FOR THE 2015 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2015—Continued

State	County	2015 Base case	2015 CAIR	Impact of CAIR
Illinois	Will Co	15.12	14.27	−0.85
Indiana	Clark Co	16.37	14.79	−1.58
Indiana	Dubois Co	15.66	14.16	−1.50
Indiana	Lake Co	17.27	16.36	−0.91
Indiana	Marion Co	16.77	15.38	−1.39
Indiana	Vanderburgh Co	15.56	14.17	−1.39
Kentucky	Boyd Co	15.06	12.95	−2.11
Kentucky	Fayette Co	15.62	13.54	−2.08
Kentucky	Jefferson Co	16.61	15.13	−1.48
Kentucky	Kenton Co	15.09	13.26	−1.83
Maryland	Baltimore city	17.04	14.50	−2.54
Maryland	Baltimore Co	15.08	12.75	−2.33
Michigan	Wayne Co	19.28	17.95	−1.33
Mississippi	Jones Co	15.18	14.06	−1.12
Missouri	St. Louis city	15.34	14.50	−0.84
New York	New York Co	15.76	14.33	−1.43
North Carolina	Catawba Co	15.19	13.45	−1.74
North Carolina	Davidson Co	15.34	13.61	−1.73
Ohio	Butler Co	16.32	14.67	−1.65
Ohio	Cuyahoga Co	18.60	16.67	−1.93
Ohio	Franklin Co	16.64	14.57	−2.07
Ohio	Hamilton Co	18.03	16.10	−1.93
Ohio	Jefferson Co	17.83	15.26	−2.57
Ohio	Lawrence Co	15.92	13.71	−2.21
Ohio	Mahoning Co	15.13	12.94	−2.19
Ohio	Montgomery Co	15.16	13.33	−1.83
Ohio	Scioto Co	17.92	15.55	−2.37
Ohio	Stark Co	16.86	14.58	−2.28
Ohio	Summit Co	16.14	14.18	−1.96
Ohio	Trumbull Co	15.05	13.08	−1.97
Pennsylvania	Allegheny Co	20.33	17.47	−2.86
Pennsylvania	Beaver Co	15.54	13.09	−2.45
Pennsylvania	Berks Co	15.66	12.99	−2.67
Pennsylvania	Delaware Co	15.52	13.52	−2.00
Pennsylvania	Lancaster Co	16.28	13.33	−2.95
Pennsylvania	Philadelphia Co	16.53	14.53	−2.00
Pennsylvania	York Co	16.22	13.46	−2.76
Tennessee	Davidson Co	15.36	14.02	−1.34
Tennessee	Hamilton Co	16.82	14.94	−1.88
Tennessee	Knox Co	17.34	15.61	−1.73
Tennessee	Shelby Co	15.17	14.19	−0.98
Tennessee	Sullivan Co	15.37	13.77	−1.60
West Virginia	Berkeley Co	15.32	12.73	−2.59
West Virginia	Brooke Co	16.51	14.05	−2.46
West Virginia	Cabell Co	16.86	14.64	−2.22
West Virginia	Hancock Co	16.97	14.54	−2.43
West Virginia	Kanawha Co	17.17	14.66	−2.51
West Virginia	Marshall Co	15.52	12.87	−2.65
West Virginia	Wood Co	16.69	13.88	−2.81

As described in section VI.B.1, we project that 79 counties in the East will be nonattainment for $PM_{2.5}$ in the 2010 base case. We estimate that, on average, the regional strategy will reduce $PM_{2.5}$ in these 79 counties by 1.6 μg/m³. In over 90 percent of the nonattainment counties (*i.e.*, 74 out of 79 counties), we project that $PM_{2.5}$ will be reduced by at least 1.0 μg/m³. In over 25 percent of the 79 nonattainment counties (*i.e.*, 23 of the 79 counties), we project $PM_{2.5}$ concentrations will decline by of more than 2.0 μg/m³. Of the 79 counties that are nonattainment in the 2010 Base, we project that 51 counties will come into attainment as a result of the SO_2 and NO_X emissions reductions expected from the regional controls. Even those 28 counties that remain nonattainment in 2010 after implementation of the regional strategy will be closer to attainment as a result of these emissions reductions. Specifically, the average reduction of $PM_{2.5}$ in the 28 residual nonattainment counties is projected to be 1.3 μg/m³. After implementation of the regional controls, we project that 18 of the 28 residual nonattainment counties in 2010 will be within 1.0 μg/m³ of the NAAQS and 12 counties will be within 0.5 μg/m³ of attainment.

In 2015 we are projecting that $PM_{2.5}$ in the 74 base case nonattainment counties will be reduced by 1.8 μg/m³, on average, as a result of the SO_2 and NO_X reductions in the regional strategy. In over 90 percent of the nonattainment counties (*i.e.*, 67 of the 74 counties) concentrations of $PM_{2.5}$ are predicted to be reduced by at least 1.0 μg/m³. In over 35 percent of the counties (*i.e.*, 27 of the 74 counties), we project the regional strategy to reduce $PM_{2.5}$ by more than 2.0 μg/m³. As a result of the reductions in $PM_{2.5}$, 56 nonattainment counties are projected to come into attainment in 2015. The remaining 18 nonattainment

counties are projected to be closer to attainment with the regional strategy. Our modeling results indicate that $PM_{2.5}$ will be reduced in the range of 0.7 μg/m³ to 2.9 μg/m³ in these 18 counties. The average reduction across these 18 residual nonattainment counties is 1.5 μg/m³.

Thus, the SO_2 and NO_X emissions reductions which will result from the regional strategy will greatly reduce the extent of $PM_{2.5}$ nonattainment by 2010 and beyond. These emissions reductions are expected to substantially reduce the number of $PM_{2.5}$ nonattainment counties in the East and make attainment easier for those counties that remain nonattainment by substantially lowering $PM_{2.5}$ concentrations in these residual nonattainment counties.

2. Estimated Impacts on 8-Hour Ozone Concentrations and Attainment

We determined the impacts on 8-hour ozone of the regional strategy by running the CAM_X model for this strategy and comparing the results to the ozone concentrations predicted for the 2010 and 2015 base cases. In brief, we ran the CAM_X model for the regional strategy in both 2010 and 2015. The model predictions were used to project future 8-hour ozone concentrations for the regional strategy in 2010 and 2015 using the Relative Reduction Factor technique, as described in section VI.B.1. We compared the results of the 2010 and 2015 regional strategy modeling to the corresponding results from the 2010 and 2015 base cases to quantify the expected impacts of the regional controls.

The results of the regional strategy ozone modeling are expressed in terms of the expected reductions in projected 8-hour concentrations and the implications for future nonattainment. The impacts of the regional NO_X emissions reductions on 8-hour ozone in 2010 and 2015 are provided in Table VI–12 and Table VI–13, respectively. In these tables, counties shown in bold/italics are projected to come into attainment with the regional controls.

TABLE VI–12.—PROJECTED 8-HOUR CONCENTRATIONS (PPB) FOR THE 2010 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2010

State	County	2010 Base case	2010 CAIR	Impact of CAIR
Connecticut	Fairfield Co	92.6	92.2	−0.4
Connecticut	Middlesex Co	90.9	90.6	−0.3
Connecticut	New Haven Co	91.6	91.3	−0.3
District of Columbia	District of Columbia	85.2	85.0	−0.2
Delaware	New Castle Co	85.0	84.7	−0.3
Georgia	Fulton Co	86.5	85.1	−1.4
Maryland	Anne Arundel Co	88.8	88.6	−0.2
Maryland	Cecil Co	89.7	89.5	−0.2
Maryland	Harford Co	93.0	92.8	−0.2
Maryland	Kent Co	86.2	85.8	−0.4
Michigan	Macomb Co	85.5	85.4	−0.1
New Jersey	Bergen Co	86.9	86.0	−0.9
New Jersey	Camden Co	91.9	91.6	−0.3
New Jersey	Gloucester Co	91.8	91.3	−0.5
New Jersey	Hunterdon Co	89.0	88.6	−0.4
New Jersey	Mercer Co	95.6	95.2	−0.4
New Jersey	Middlesex Co	92.4	92.1	−0.3
New Jersey	Monmouth Co	86.6	86.4	−0.2
New Jersey	Morris Co	86.5	85.5	−1.0
New Jersey	Ocean Co	100.5	100.3	−0.2
New York	Erie Co	87.3	86.9	−0.4
New York	Richmond Co	87.3	87.1	−0.2
New York	Suffolk Co	91.1	90.8	−0.3
New York	Westchester Co	85.3	84.7	−0.6
Ohio	Geauga Co	87.1	86.6	−0.5
Pennsylvania	Bucks Co	94.7	94.3	−0.4
Pennsylvania	Chester Co	85.7	85.4	−0.3
Pennsylvania	Montgomery Co	88.0	87.6	−0.4
Pennsylvania	Philadelphia Co	90.3	89.9	−0.4
Rhode Island	Kent Co	86.4	86.2	−0.2
Texas	Denton Co	87.4	86.8	−0.6
Texas	Galveston Co	85.1	84.6	−0.5
Texas	Harris Co	97.9	97.4	−0.5
Texas	Jefferson Co	85.6	85.0	−0.6
Texas	Tarrant Co	87.8	87.2	−0.6
Virginia	Arlington Co	86.2	86.0	−0.2
Virginia	Fairfax Co	85.7	85.4	−0.3
Wisconsin	Kenosha Co	91.3	91.0	−0.3
Wisconsin	Ozaukee Co	86.2	85.8	−0.4
Wisconsin	Sheboygan Co	88.3	87.7	−0.6

TABLE VI–13.—PROJECTED 8-HOUR CONCENTRATIONS (PPB) FOR THE 2015 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2015

State	County	2015 Base case	2015 CAIR	Impact of CAIR
Connecticut	Fairfield Co	91.4	90.6	−0.8

TABLE VI–13.—PROJECTED 8-HOUR CONCENTRATIONS (PPB) FOR THE 2015 BASE CASE AND CAIR AND THE IMPACT OF CAIR REGIONAL CONTROLS IN 2015—Continued

State	County	2015 Base case	2015 CAIR	Impact of CAIR
Connecticut	Middlesex Co	89.1	88.4	−0.7
Connecticut	New Haven Co	89.8	89.1	−0.7
Maryland	Anne Arundel Co	86.0	84.9	−1.1
Maryland	Cecil Co	86.9	85.4	−1.5
Maryland	Harford Co	90.6	89.6	−1.0
Michigan	Macomb Co	85.1	84.2	−0.9
New Jersey	Bergen Co	85.7	84.5	−1.2
New Jersey	Camden Co	89.5	88.3	−1.2
New Jersey	Gloucester Co	89.6	88.2	−1.4
New Jersey	Hunterdon Co	86.5	85.4	−1.1
New Jersey	Mercer Co	93.5	92.4	−1.1
New Jersey	Middlesex Co	89.8	88.8	−1.0
New Jersey	Ocean Co	98.0	96.9	−1.1
New York	Erie Co	85.2	84.2	−1.0
New York	Suffolk Co	89.9	89.0	−0.9
Pennsylvania	Bucks Co	93.0	91.8	−1.2
Pennsylvania	Montgomery Co	86.5	84.9	−1.6
Pennsylvania	Philadelphia Co	88.9	87.5	−1.4
Texas	Harris Co	97.3	96.4	−0.9
Texas	Jefferson Co	85.0	84.1	−0.9
Wisconsin	Kenosha Co	89.4	88.8	−0.6

As described in section VI.B.1, we project that 40 counties in the East would be nonattainment for 8-hour ozone under the assumptions in the 2010 base case. Our modeling of the regional controls in 2010 indicates that 3 of these counties will come into attainment of the 8-hour ozone NAAQS and that ozone in 16 of the 40 nonattainment counties will be reduced by 1 ppb or more. In addition, our modeling predicts that 8-hour ozone exceedances (*i.e.*, 8-hour ozone of 85 ppb or higher) within nonattainment areas are expected to decline by 5 percent in 2010 with CAIR. Of the 37 counties that are projected to remain nonattainment in 2010 after the regional strategy, nearly half (*i.e.*, 16 of the 37 counties) are within 2 ppb of attainment.

In 2015, we project that 6 of the 22 counties which are nonattainment for 8-hour ozone in the base case will come into attainment with the regional strategy. Ozone concentrations in over 70 percent (*i.e.*, 16 of 22 counties) of the 2015 base case nonattainment counties are projected to be reduced by 1 ppb or more as a result of the regional strategy. Exceedances of the 8-hour ozone NAAQS are predicted to decline in nonattainment areas by 14 percent with regional controls in place in 2015. Thus, the NO_X emissions reductions which will result from the regional strategy will help to bring 8-hour ozone nonattainment areas in the East closer to attainment by 2010 and beyond.

F. What are the Estimated Visibility Impacts of the Final Rule?

1. Methods for Calculating Projected Visibility in Class I Areas

The NPR contained example future year visibility projections for the 20 percent worst days and 20 percent best days at Class I areas that had complete IMPROVE monitoring data in 1996. Changes in future visibility were predicted by using the REMSAD model to generate relative visibility changes, then applying those changes to measured current visibility data. Details of the visibility modeling and calculations can be found in the NPR AQMTSD. An example visibility calculation was given in Appendix M of the NPR AQMTSD along with the predicted improvement in visibility (in deciviews) on the 20 percent best and worst days at 44 Class I areas. The data contained in Appendix M was for informational purposes only and was not used in the significant contribution determination or control strategy development decisions.

The SNPR contained visibility calculations in support of the "better-than-BART" analysis. The better-than-BART analysis employed a two-pronged test to determine if the modeled visibility improvements from the CAIR cap and trade program for EGU's were "better" than the visibility improvements from a nationwide BART program. The analysis used the visibility calculation methodology detailed in the NPR TSD. Detailed results of the SNPR better-than-BART analysis are contained in the SNPR AQMTSD. The better-than-BART analysis for the final rule is addressed in section IX.C.2 of the preamble. Additional information on the visibility calculation methodology is contained in the NFR AQMTSD.

2. Visibility Improvements in Class I Areas

For the NFR we have modeled several new CAIR [107] and CAIR + BART cases to re-examine the better-than-BART two-pronged test. We have modeled an updated nationwide BART scenario as well as a CAIR in the East/BART in the West scenario. The results were analyzed at 116 Class I areas that have complete IMPROVE data for 2001 or are represented by IMPROVE monitors with complete data. Twenty-nine of the Class I areas are in the East and 87 are in the West. The results of the visibility analysis are summarized in section IX.C.2. Detailed results for all 116 Class I areas are presented in the NFR AQMTSD.

VII. SIP Criteria and Emissions Reporting Requirements

This section describes: (1) The criteria we will use in determining approvability of SIPs submitted to meet the requirements of today's rulemaking; (2) the dates for submittal of the SIPs that are required under the CAIR; (3) the consequences of either failing to submit such a SIP or submitting a SIP which is

[107] The CAIR scenario modeled for the visibility analysis included controls in Arkansas, Delaware, and New Jersey.

disapproved; and (4) the emissions inventory reporting requirements for States.

A. What Criteria Will EPA Use To Evaluate the Approvability of a Transport SIP?

1. Introduction

The approvability criteria for CAIR SIP submissions are finalized today in 40 CFR 51.123 (NO_X emissions reductions) and in 40 CFR 51.124 (SO_2 emissions reductions). Most of the criteria are substantially similar to those that currently apply to SIP submissions under CAA section 110 or part D (nonattainment). For example, each submission must describe the control measures that the State intends to employ, identify the enforcement methods for monitoring compliance and managing violations, and demonstrate that the State has legal authority to carry out its plan.

This part of the preamble explains additional approvability criteria specific to the CAIR that were proposed and discussed in the CAIR NPR or in the CAIR SNPR, and are being promulgated today. As explained in both the CAIR NPR and the CAIR SNPR, EPA proposed that each affected State must submit SIP revisions containing control measures that assure that a specified amount of NO_X and SO_2 emissions reductions are achieved by specified dates.

Although EPA determined the amount of emissions reductions required by identifying specific, highly cost-effective control levels for EGUs, EPA explained in the CAIR NPR and the CAIR SNPR that States have flexibility in choosing which sources to control to achieve the required emissions reductions. As long as a State's emissions reductions requirements are met, a State may impose controls on EGUs only, on non-EGUs only, or on a combination of EGUs and non-EGUs. The SIP approvability criteria are intended to provide as much certainty as possible that, whichever sources a State chooses to control, the controls will result in the required amount of emissions reductions.

In the CAIR NPR, EPA proposed a "hybrid" approach for the mechanisms used to ensure emissions reductions are achieved. This approach incorporates elements of an emissions "budget" approach (requiring an emissions cap on affected sources) and an "emissions reduction" approach (not requiring an emissions cap). In this hybrid approach, if States impose control measures on EGUs, they would be required to impose an emissions cap on all EGUs, which would effectively be an emissions budget. And, as stated in the CAIR NPR, if States impose control measures on non-EGUs, they would be encouraged but not required to impose an emissions cap on non-EGUs. In the CAIR NPR, we requested comment on the issue of requiring States to impose caps on any source categories that the State chooses to regulate.

In the CAIR SNPR, we proposed to modify the hybrid approach and require States that choose to control large industrial boilers or turbines (greater than 250 MMBTU/hr) to impose an emissions cap on all such sources within their State. This is similar to EPA's approach in the NO_X SIP Call which required States to include an emissions cap on such sources as well as on EGUs if the SIP submittals included controls on such sources. (See 40 CFR 51.121(f)(2)(ii).)

A few commenters supported the use of emissions caps on any source category subject to CAIR controls, including non-EGUs, because it would be the most effective way to demonstrate compliance with the budget. A few other commenters opposed the use of an emissions cap on non-EGUs, saying either that States should have the flexibility to determine whether to impose a cap, or that such a requirement would result in increased costs for non-EGUs including cogeneration units that are non-EGUs. No commenter opposing such a requirement provided any information indicating that such a requirement would be ineffective or impracticable. Today EPA is adopting the modified approach, as described in the CAIR SNPR, that States choosing to control EGUs or large industrial boilers or turbines must do so by imposing an emissions cap on such sources, similar to what was required in the NO_X SIP Call.

Extensive comments were received regarding the need for an ozone season NO_X cap in States identified to be contributing significantly to the region's ozone nonattainment problems. In proposal, EPA stated that the annual NO_X cap under CAIR reduced NO_X emissions sufficiently enough to not warrant a regional ozone season NO_X cap. Commenters remained very concerned that the annual NO_X cap would not aid ozone attainment. While EPA feels that the annual NO_X limit will most likely be protective in the ozone season, a seasonal cap will provide certainty, which EPA agrees is very important in the effort to help areas achieve ozone attainment. Today, EPA is finalizing an ozone season NO_X cap for States shown to contribute significantly for ozone. As is further explained in section VIII, EPA is also finalizing an ozone season trading program that States may use to achieve the required emissions reductions. This program will subsume the existing NO_X SIP Call trading program. Therefore, any State that wishes to continue including its sources in an interstate trading program run by EPA to achieve the emissions reductions required by EPA must modify its SIP to conform with this new trading program.

The EPA will automatically find that a State is continuing to meet its NO_X SIP Call obligation if it achieves all of its required CAIR emissions reductions by capping EGUs, it modifies its existing NO_X SIP Call to require its non-EGUs currently participating in the NO_X SIP Call budget trading program to conform to the requirements of the CAIR ozone season NO_X trading program with a trading budget that is the same or tighter than the budget in the currently approved SIP, and it does not modify any of its other existing NO_X SIP Call rules. If a State chooses to achieve the ozone season NO_X emissions reduction requirements of CAIR in another way, it will also be required to demonstrate that it continues to meet the requirements of the NO_X SIP Call.

Specific criteria for approval of CAIR SIP submissions as promulgated by today's action are described below. The criteria are dependent on the types of sources a State chooses to control.

2. Requirements for States Choosing To Control EGUs

a. Emissions Caps and Monitoring

As explained in the CAIR NPR (69 FR 4626), and in the CAIR SNPR (69 FR 32691), EPA proposed requiring States to apply the "budget" approach if they choose to control EGUs; that is, each State must cap total EGU emissions at the level that assures the appropriate amount of reductions for that State. The requirement to cap all EGUs is important because it prevents shifting of utilization (and resulting emissions) to uncapped EGUs. The EGUs are part of a highly interconnected electricity grid that makes utilization shifting likely and even common. The units are large and offer the same market product (*i.e.*, electricity), and therefore the units that are least expensive to operate are likely to be operated as much as possible. If capped and uncapped units are interconnected, the uncapped units' costs would tend to decrease relative to the capped units, which must either reduce emissions or use or buy allowances, and the uncapped units' utilization would likely increase. The cap ensures that emissions reductions

from these interconnected sources are actually achieved rather than emissions simply shifting among sources. The caps constitute the State EGU Budgets for SO_2 and NO_X. Additionally, EPA proposed that, if States choose to control EGUs, they must require EGUs to follow part 75 monitoring, recordkeeping, and reporting requirements. Part 75 monitoring and reporting requirements have been used effectively for determining NO_X and SO_2 emissions from EGUs under the title IV Acid Rain program and the NO_X SIP Call program and in combination with emissions caps are an integral part of those programs. (Additional explanation for the need for Part 75 monitoring is given in the NPR and SNPR and is incorporated here.) Therefore, today, EPA adopts the requirements for emission caps and Part 75 monitoring for EGUs in these States.

b. Using the Model Trading Rules

As proposed, if a State chooses to allow its EGUs to participate in EPA-administered interstate NO_X and SO_2 emissions trading programs, the State must adopt EPA's model trading rules, as described elsewhere in today's preamble and in §§ 96.101–96.176 (for NO_X) and §§ 96.201–96.276 (for SO_2), set forth below. Additionally, EPA proposed that for the States for which EPA made a finding of significant contribution for both ozone and $PM_{2.5}$, participation in both the NO_X and SO_2 trading programs would be required in order to be included in the EPA-administered program. States for which the finding was for ozone only could choose to participate in only the EPA-administered NO_X trading program through adoption of the NO_X model trading rule. The EPA stated that States adopting EPA's model trading rules, modified only as specifically allowed by EPA, will meet the requirement for applying an emissions cap and requirement to use part 75 monitoring, recordkeeping, and reporting for EGUs.

Some commenters opposed EPA's proposal to require participation in both the NO_X and SO_2 trading programs because some States may want to participate in the EPA-administered trading programs for only NO_X or only SO_2. A few commenters claimed that the requirement to participate in both programs would limit State flexibility or is an "all or nothing" approach; other commenters objected that there was no environmental basis for such a requirement; and one commenter suggested that States not affected by CAIR but that volunteer to control emissions should be permitted to join the program for one or both pollutants. Additionally, commenters cited a need for an ozone season NO_X program.

The EPA has taken the comments into account and in today's action agrees to allow a State identified to contribute significantly for $PM_{2.5}$ (and therefore required to make annual SO_2 and NO_X reductions) to participate in the EPA-administered CAIR trading program for either SO_2 or NO_X, not necessarily both, so long as the State adopts the model rule for the applicable trading program.

In response to extensive comments relating to EPA's proposal to forego a seasonal NO_X cap because EPA demonstrated that the annual NO_X cap was sufficiently stringent, EPA is finalizing an ozone season NO_X trading program for States identified as contributing significantly for ozone. These States will be subject to an ozone season NO_X cap and an annual NO_X cap if the State is also identified as contributing significantly for $PM_{2.5}$. Therefore, today's action includes an additional model rule for an ozone season NO_X trading program (40 CFR 96, subparts AAAA through IIII). The States that may use the ozone season NO_X trading program but not the annual NO_X trading program are those States in the CAIR region identified as contributing significantly for ozone only (Arkansas, Connecticut, Delaware, Massachusetts, and New Jersey).

As discussed in the proposal, EPA is finalizing the option for New Hampshire and Rhode Island to participate in the regional trading program through use of the CAIR ozone season NO_X model rule because sources in these States have made investments in NO_X controls in the past based on the existence of a regional ozone season NO_X trading program. Additionally, the States' combined projected 2010 and 2015 NO_X emissions are less than one-half of one percent of the total CAIR regional NO_X cap and therefore would not create a significant increase in the CAIR cap. All comments received were supportive of this approach and EPA is finalizing it today.

None of these States (Arkansas, Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, or Rhode Island) has the option to participate in the EPA-administered CAIR SO_2 trading program nor the annual CAIR NO_X trading program because there are no $PM_{2.5}$-related emissions reductions required under today's action in those States. (Of course, sources in these States will still be subject to the Acid Rain SO_2 cap and trade program.) Likewise, Texas, Minnesota and Georgia may not participate in the ozone season NO_X program, because they have not been shown to contribute significantly to the regional ozone problem. They are, however, required to make annual NO_X and SO_2 reductions and may choose to participate in the annual NO_X and annual SO_2 trading program to meet their CAIR obligations.

Except for the special cases of Rhode Island and New Hampshire, other States outside of the CAIR region may not participate in the CAIR trading programs for either pollutant, because they were not shown to contribute significantly to $PM_{2.5}$ or ozone nonattainment in the CAIR region. Allowing States outside of the CAIR region to participate would generally create an opportunity—through net sales of allowances from the non-CAIR States to CAIR States—for emission increases in States that have been shown to contribute significantly to nonattainment in the CAIR region.[108]

A State may not participate in the EPA-administered trading programs if they choose to get a portion of CAIR reductions from non-EGUs. (This is also discussed in Section VIII.) The EPA maintains that requiring certain consistencies among States in the regionwide trading programs that EPA has offered to run does not unfairly limit States' flexibility to choose an approach for achieving CAIR mandated reductions that is best suited for a particular State's unique circumstances. States are free to achieve the reductions through whatever alternative mechanisms the States wish to design; for example, a group of States could cooperatively implement their own multi-State trading programs that EPA would not administer.

c. Using a Mechanism Other Than the Model Trading Rules

If States choose to control EGUs through a mechanism other than the EPA-administered NO_X and SO_2 emissions trading programs, then the States (i) must still impose an emissions cap on total EGU emissions and require part 75 monitoring, recordkeeping, and reporting requirements on all EGUs, and (ii) must use the same definition of EGU as EPA uses in its model trading rules, i.e., the sources described as "CAIR units" in § 96.102, § 96.202, and § 96.302. A few commenters expressed concern that these requirements limit States' discretion in designing control measures to meet the CAIR requirements, but failed to offer any

[108] Title IV allowances can however be traded freely across the boundary of the CAIR region without any significant, negative environmental consequence. The potential negative consequences have been addressed through other requirements discussed below, like the retirement of excess title IV allowances.

reason why the requirements would be impracticable or ineffective. The EPA believes that the requirements are necessary for a number of reasons. The requirements to cap all EGUs and to use the same definition of EGU are important because they prevent shifting of utilization (and resulting emissions) from capped to uncapped sources. In this case, not requiring a cap on total EGU emissions in these States is likely to result in increased utilization and consequently increased emissions in these States. The requirement to use part 75 monitoring ensures the accuracy of monitored data and consistency of reporting among sources (and thus the certainty that emissions reductions actually occurred) across all States. Furthermore, most EGUs are currently monitoring and reporting using part 75 so it does not impose an additional requirement. Therefore, EPA is finalizing the proposed approach.

If a State chooses to design its own intrastate or interstate NO_X or SO_2 emissions trading programs, the State must, in addition to meeting the requirements of the rules finalized in today's action, consider EPA's guidance, "Improving Air Quality with Economic Incentive Programs," January, 2001 (EPA–452/R–01–001) (available on EPA's Web site at: *http://www.epa.gov/ttn/ecas/incentiv.html*). The State's programs are subject to EPA approval. The EPA will not administer a State-designed trading program. Additionally, it should be noted that allowances from any alternate trading program may not be used in the EPA-administered trading programs.

d. Retirement of Excess Title IV Allowances

The CAIR NPR proposed requirements on SIPs relating to the effects of title IV SO_2 allowance allocations for 2010 and beyond that are in excess of the State's CAIR EGU SO_2 emissions budget. The requirements were intended to ensure that the excess is not used in a manner that would lead to a significant increase in supply of title IV allowances, the collapse of the price of title IV allowances, the disruption of operation of the title IV allowance market and the title IV SO_2 cap and trade system, and the potential for increased emissions in all States prior to 2010 and in non-CAIR States in 2010 and later. These negative impacts on the title IV allowance market and on air quality, which are discussed in detail in section IX.B. below, would undermine the efficacy of the title IV program and could erode confidence in cap and trade programs in general. To avoid these impacts, EPA proposed to require retirement of the excess title IV allowances through a retirement ratio mechanism.

The EPA proposed, as a mechanism for removing these additional allowances and meeting the 50 percent reduction required under phase I (2010–2014), that each affected EGU had to hold, and EPA would retire, two vintage 2010–2014 allowances for every ton of SO_2 that the unit emits. Further, EPA proposed that, for phase II (which begins in 2015) when a 65 percent reduction is required, each affected EGU had to hold, and EPA would retire, three vintage 2015 and beyond allowances for every ton of SO_2 that the unit emits. This 3-to-1 ratio would result in slightly more reductions than EPA has determined were necessary to eliminate the significant contribution by an upwind State.

In the CAIR SNPR, EPA proposed two alternatives for addressing the issue of the additional allowances. Under the first alternative, affected EGUs had to hold, and EPA would retire, vintage 2015 and beyond allowances at a rate of 2.86-to-1 rather than 3-to-1, which would result in exactly the amount of reductions EPA has determined are necessary to eliminate a State's significant contribution.

Alternatively, also in the CAIR SNPR, EPA proposed requiring the retirement of 2015 and beyond vintage allowances at a 3-to-1 ratio and permitting States to convert the additional reductions into allowances in their rules. The EPA also suggested that some States may want to use these reserved allowances to create an incentive for additional local emissions reductions that will be needed to bring all areas into attainment with the $PM_{2.5}$ NAAQS.

As part of today's final CAIR rulemaking, EPA is finalizing a ratio of 2.86-to-one. The ratio ultimately represents a reduction of 65 percent from the final title IV cap level, which has been found to be highly cost-effective. For a detailed discussion regarding EPA's determination of highly cost-effective, please refer to Section IV of the final CAIR preamble. As discussed earlier, EPA must employ a uniform ratio across sources to ensure consistency and the same cost-effectiveness level across sources. Therefore, EPA will use a Phase II ratio of 2.86-to-1 for all States affected by CAIR who choose to participate in the trading program.

Today, EPA is finalizing the general requirement that all SIPs must include a mechanism to ensure that excess SO_2 allowances are retired. Furthermore, for States that participate in the EPA-administered cap and trade program, EPA is finalizing a specific mechanism that States must use.

i. States Participating in the EPA-Administered SO_2 Trading Program

If a State chooses to participate in the EPA-administered trading program, the State's excess title IV allowance retirement mechanism must follow the provisions of the SO_2 model trading rule that requires that vintage 2010 through 2014 title IV allowances be retired at a ratio of two allowances for every ton of emissions and that vintage 2015 and beyond title IV allowances be retired at a ratio of 2.86 allowances for every ton of emissions. Pre-2010 vintage allowances would be retired at a ratio of one allowance for every ton of emissions. (See discussion of the model SO_2 cap and trade rule in section VIII of today's preamble.) States using the model SO_2 cap and trade rule satisfy the requirement for retirement of excess title IV allowances.

ii. States Not Participating in the EPA-Administered SO_2 Trading Program

In the CAIR NPR, EPA stated that if a State does not choose to participate in the EPA-administered trading programs but controls only EGUs, the State may choose the specific method to retire allowances in excess of its budget. The EPA considered alternative ways for retiring these excess allowances and, as stated in the CAIR SNPR, believed that the use by different States of different means to address this concern could undermine the regionwide emissions reduction goals of the CAIR rulemaking. The EPA further described its concerns in section II of the preamble to the CAIR SNPR. (*See* 69 FR 32686–32688.) Because of these concerns, in the CAIR SNPR, EPA withdrew the CAIR NPR proposal on this point and re-proposed that all States use a 2-for-1 retirement ratio for vintage 2010 through 2014 allowances and a 2.86-for-1 or a 3-for-1 retirement ratio for vintage 2015 and beyond allowances to address concerns about title IV allowances that exceed State budgets. The EGUs would have a total emissions cap enforced by the State.

The SNPR described that for sources affected by both title IV and CAIR, allowance deductions and associated compliance determinations would be sequential. That is, title IV compliance would be determined and then CAIR compliance would be determined. So, in 2010–2014, after surrendering one vintage 2010 through 2014 allowance for each ton of emissions for title IV compliance, the source would then surrender one additional allowance (for a total of two allowances for each ton

which meets the CAIR requirement). Similarly, in 2015 and beyond, after surrendering one vintage 2015 and beyond allowance for each ton of emissions for title IV compliance, the source would surrender 1.86 or 2 additional allowances and therefore meet the CAIR requirement. Commenters argued that in States where EGUs are not trading under CAIR that the excess title IV allowances could be removed in a variety of ways and that EPA did not need to require each State do this the same way, only that each State ensure that they are removed.

Today, EPA adopts the following requirement: If a State does not choose to participate in the EPA-administered trading programs but controls only EGUs, the State must include in its SIP a mechanism for retiring the excess title IV allowances (i.e., the difference between total allowance allocations in the State and the State EGU SO_2 budget). To meet this requirement, the State may use the above-described retirement mechanism or may develop a different mechanism that will achieve the required retirement of excess allowances.

3. Requirements for States Choosing to Control Sources Other Than EGUs

a. Overview of Requirements

As noted in both the CAIR NPR and the CAIR SNPR, if a State chooses to require emissions reductions from non-EGUs, the State must adopt and submit SIP revisions and supporting documentation designed to quantify the amount of reductions from the non-EGU sources and to assure that the controls will achieve that amount. Although EPA did not propose in the CAIR NPR that States be required to impose an emissions cap on those sources, but instead solicited comment on the issue, EPA proposed in the CAIR SNPR that States be required to impose an emissions cap in certain cases on non-EGU sources. (See discussion in VII.A.1 of today's preamble.)

If a State chooses to obtain some, but not all, of its required reductions for SO_2 or NO_X emissions from non-EGUs, it would still be required to set an EGU budget for SO_2 or NO_X respectively, but it would set such a budget at some level higher than shown in Tables V–1, V–2, or V–4 in today's preamble, thus allowing more emissions from EGUs. The difference between the amount of a State's SO_2 budget in Table V–1 and a State's selected higher EGU SO_2 budget would be the amount of SO_2 emissions reductions the State demonstrates it will achieve from non-EGU sources. By the same token, the difference between the amount of a State's annual NO_X budget in Table V–2 and a State's selected higher annual EGU NO_X budget would be the amount of annual NO_X emissions reductions the State demonstrates it will achieve from non-EGU sources.[109] Further, the difference between the amount of a State's seasonal NO_X budget in Table V–4 and a State's selected higher ozone season EGU NO_X budget would be the amount of ozone season NO_X emissions reductions the State demonstrates it will achieve from non-EGU sources.

Special Concerns About SO_2 Allowances

In the case where a State requires a portion of its SO_2 emissions reductions from non-EGU sources and a portion from EGUs, there remains a concern about the impact of excess title IV allowances above a State's EGU cap, particularly on the operation of the title IV SO_2 cap and trade program. Consequently, today, we are adopting the requirement that these States include a mechanism for retirement of the allowances in excess of the State's SO_2 budget.

Like a State choosing to control only EGUs but not to participate in the trading program, a State that chooses to control non-EGUs and EGUs must adopt a mechanism for retiring surplus title IV allowances. The number of title IV allowances that must be retired is equal to the difference between the number of title IV allowances allocated to EGUs in that State and the SO_2 budget the State sets for EGUs under this rule. If the State uses a retirement mechanism (as discussed in VII.A.2.d.) in which a source surrendering allowances under the title IV SO_2 cap and trade program surrenders more allowances than otherwise required under title IV, the total number of allowances surrendered per ton of emissions in this case will be less than 2 to 1 in Phase 1 and less than 2.86 to 1 in Phase 2. This is because the non-EGUs will control to achieve a portion of the CAIR SO_2 reduction required, and so there will be a smaller surplus of title IV allowances than if all the required reductions were achieved by EGUs. The appropriate retirement factor will equal two times the State's SO_2 budget in Phase I or 2.86 times the State's SO_2 budget in Phase II as noted in Table V–1 of the budget section, divided by the State's selected higher EGU SO_2 budget (taking into account non-EGU reductions). The factor could then be used as the EGU retirement ratio for compliance purposes in a scenario where a State has decided to control SO_2 emissions from EGUs through a mechanism other than the EPA-administered trading program.

A simplified example can help illustrate this. Let us assume a State's sources were allocated a total of 200 allowances under title IV. Under CAIR, in Phase I, the State's reduction requirement would thus be 100 tons. Suppose this State decided that 25 tons would be reduced by non-EGUs and the remaining 75 tons would be reduced by the EGUs. (The State's budget for EGUS would increase to 125 tons.) The State would also need to retire 75 excess title IV allowances. This could be accomplished by requiring each Acid Rain source to surrender a total of 1.6 vintage 2010 through 2014 allowances (200 allowances allocated in the State/125 tons in State EGU budget) per ton of SO_2 emissions. The allowances surrendered would satisfy the Acid Rain Program requirement of surrendering one allowance per ton of emissions, as well as achieving the additional retirement requirement under CAIR since 200 allowances would be used for EGUs to emit the EGU budget of 125 tons of SO_2. (Pre-2010 allowances continue to be available for use on a one-allowance-per-ton-of-emissions basis here as in other situations.)

This is consistent with EPA's overall approach. If this same State decided to get all reductions (i.e., 100 tons) from EGUs, the State would require EGUs to retire 100 additional allowances by surrendering a total of 2 vintage 2010 through 2014 allowances (200 allowances allocated in the State/100 tons in State EGU budget) per ton of SO_2 emissions.

The demonstration of emissions reductions from non-EGUs is a critical requirement of the SIP revision due from a State that chooses to control non-EGUs. The State must take into account the amount of emissions attributable to the source category in both (i) the base case, in the implementation years 2010 and 2015, i.e., without assuming any SIP-required reductions under the CAIR from non-EGUs; and (ii) in the control case, in the implementation years 2010 and 2015, i.e., assuming SIP-required reductions under the CAIR from non-EGUs. We proposed an alternative methodology for calculating the base case for certain large non-EGU sources, as described below, but generally the difference between emissions in the base case and emissions in the control

[109] In the CAIR SNPR, EPA mistakenly cited the EGU budget numbers from Tables VI–9 and VI–10 in the CAIR NPR (69 FR 4619–20) when it should have cited Tables II–1 and II–2 in the CAIR SNPR. The EPA used the correct numbers, however, in the proposed regulatory text in the CAIR SNPR (69 FR 32729–30 and 69 FR 32733–34 (§§ 51.123(e)(2) and 51.124(e)(2)).

case equals the amount of emissions reductions that can be claimed from application of the controls on non-EGUs. (See discussion later in this section for criteria applicable to development of the baseline and projected control emissions inventories.)

States that meet the lesser of their CAIR ozone season NO_X budget or NO_X SIP Call EGU trading budget using the CAIR ozone season NO_X trading program also satisfy their NO_X SIP Call requirements for EGUs. States may also choose to include all of their NO_X SIP Call non-EGUs in the CAIR ozone season NO_X program at their NO_X SIP Call levels (i.e., the non-EGU trading budget remains the same).

To the extent EPA allows through the Regional Haze Rule and a State then chooses to use EPA analysis to show that CAIR reductions from EGUs meet BART requirements, States that achieve a portion of their CAIR reductions from sources other than EGUs and wanting to show that even with those reductions the EGUs will meet BART requirements must make a supplemental demonstration that BART requirements are satisfied.

b. Eligibility of Non-EGU Reductions

In the CAIR SNPR, EPA proposed that, in evaluating whether emissions reductions from non-EGUs would count towards the emissions reductions required under the CAIR, States may only include reductions attributable to measures that are not otherwise required under the CAA. Specifically, EPA proposed that States must exclude non-EGU reductions attributable to measures otherwise required by the CAA, including: (1) Measures required by rules already in place at the date of promulgation of today's final rule, such as adopted State rules, SIP revisions approved by EPA, and settlement agreements; (2) measures adopted and implemented by EPA (or other Federal agencies) such as emissions reductions required pursuant to the Federal Motor Vehicle Control Program for mobile sources (vehicles or engines) or mobile source fuels, or pursuant to the requirements for National Emissions Standards for Hazardous Air Pollutants; and (3) specific measures which are mandated under the CAA (which may have been further defined by EPA rulemaking) based on the classification of an area which has been designated nonattainment for a NAAQS, such as vehicle inspection and maintenance programs.

In discussing this proposal, EPA noted that States required to make CAIR SIP submittals may also be required to make separate SIP submittals to meet other requirements applicable to non-EGUs, *e.g.*, nonattainment SIPs required for areas designated nonattainment under the $PM_{2.5}$ or 8-hour ozone NAAQS or regional haze SIPs. The EPA noted it is likely that CAIR SIP submittals will be due before or at the same time as some of these other SIP submittals. We therefore proposed that States relying on reductions from controls on non-EGUs must commit in the CAIR SIP revisions to replace the emissions reductions attributable to any CAIR SIP measure if that measure is subsequently determined to be required to meet any other SIP requirement.

Some commenters objected to the proposed exclusion of credit for measures which are mandated under the CAA based on the classification of an area which has been designated nonattainment for a NAAQS, as well as to the proposed requirement that such measures must be replaced if they are later determined to be required in meeting separate SIP requirements. These commenters reasoned that such a requirement would not be applied to EGUs and would impose unnecessary and costly burdens on non-EGUs, thus creating an incentive for States to avoid controlling non-EGUs and to impose all CAIR reduction requirements on EGUs. One commenter further objected that, as long as a measure was not included in the base case EPA used to determine a State's contribution to other States' nonattainment under CAA section 110(a)(2)(D), there is no justification for excluding CAIR credit for such measure, and that EPA's proposed exclusion of credit for any measure "otherwise required by the CAA" is inconsistent with the NO_X SIP Call.

In response to these comments, EPA agrees that it is not appropriate to apply this proposed restriction inconsistently to EGUs and non-EGUs. Thus, EPA is adopting a modified form of the proposed criteria for the eligibility of non-EGU emissions reductions, eliminating the requirement that States must exclude non-EGU reductions attributable to measures otherwise required by the CAA based on the classification of an area which has been designated nonattainment for a NAAQS. Consequently, the final rule allows credit for measures that a State later adopts in response to requirements which result from an area's nonattainment classification, such as reasonably available control technology (RACT). With this change, all emissions reductions are eligible for credit in meeting CAIR except: (1) Measures adopted or implemented by the State as of the date of promulgation of today's final rule, such as adopted State rules, SIP revisions approved by EPA, and settlement agreements; and (2) measures adopted or implemented by the Federal government (*e.g.*, EPA or other Federal agencies) as of the date of submission of the SIP revision by the State to EPA, such as emissions reductions required pursuant to the Federal Motor Vehicle Control Program for mobile sources (vehicles or engines) or mobile source fuels, or pursuant to the requirements for National Emissions Standards for Hazardous Air Pollutants.

This exclusion of credit is consistent with EPA's approach in the NO_X SIP Call, although a direct comparison of the creditability requirements in the CAIR and in the NO_X SIP Call is not possible due to the timing and context in which both rules were developed. The NO_X SIP Call used statewide budgets for all sources as an accounting tool to determine the adequacy of a strategy, while the CAIR takes a different approach in which baseline emission inventories for non-EGU sectors will, if needed, be developed later. The NO_X SIP Call did, as does the CAIR, restrict States from taking credit for any Federal measures adopted after promulgation of the rule (63 FR 57427–28). It also did not allow credit for already adopted measures, but the timing of the NO_X SIP Call was such that nonattainment planning measures would have already likely been adopted as the SIP deadlines for adoption of such measures had passed. In today's action, nonattainment planning measures adopted after the promulgation of today's rule will be allowed credit under CAIR.

In order to take credit for CAIR reductions from non-EGUs, the reductions must be beyond what is required under the NO_X SIP Call. That is, a reduction must be in the non-ozone season or it must be beyond what is expected in the ozone season. Non-ozone season reductions must also be beyond what is in the base case, particularly for units that have low NO_X burners and certain SCRs (*e.g.*, ones required to be run annually). The reductions must be in addition to those already expected. If ozone season reductions are considered, the non-EGU NO_X SIP Call trading budget must be adjusted by the increment of CAIR reductions beyond the levels in the NO_X SIP Call. This removes the corresponding allowances from the market and ensures that the emissions do not shift to other sources.

After evaluating the eligibility of non-EGU reductions in accordance with the requirements discussed here, States must exclude credit for ineligible

measures by (i) including such measures in both the baseline and controlled emissions inventory cases, if they have already been adopted; or (ii) excluding them from both the base and control emissions inventory cases if they have not yet been adopted. (*See* discussion later in this section regarding development of emissions inventories and demonstration of non-EGU reductions.)

c. Emissions Controls and Monitoring

As noted in section VII.A.1., we modified the "hybrid" approach described in the CAIR NPR as it applies to certain non-EGUs, and adopt today the approach described in the CAIR SNPR. Specifically, for States that choose to impose controls on large industrial boilers and turbines, *i.e.*, those whose maximum design heat input is greater than 250 mmBtu/hr, to meet part or all of their emissions reductions requirements under the CAIR, State rules must include an emissions cap on all such sources in their State. Additionally, in this situation, States must require those large industrial boilers and turbines to meet part 75 requirements for monitoring and reporting emissions as well as recordkeeping. This ensures consistency in measurement and certainty of reductions and has been proven technologically and economically feasible in other programs.

If a State chooses to control non-EGUs other than large industrial boilers and turbines to obtain the required emissions reductions, the State must either (i) impose the same requirements, *i.e.*, an emissions cap on total emissions from non-EGUs in the source category in the State and part 75 monitoring, reporting and recordkeeping requirements; or (ii) demonstrate why such requirements are not practicable. In the latter case, the State must adopt appropriate alternative requirements to ensure that emissions reductions are being achieved using methods that quantify those emissions reductions, to the extent practicable, with the same degree of assurance that reductions are being quantified for EGUs and non-EGU boilers and turbines using part 75 monitoring. This is to ensure that, regardless of how a State chooses to meet the CAIR emissions reduction requirements, all reductions made by States to comply with the CAIR have the same, high level of certainty as that achieved through the cap and trade approach. Further, if a State adopts alternative requirements that do not apply to all non-EGUs in a particular source category (defined to include all sources where any aspect of production of one or more such sources is reasonably interchangeable with that of one or more other such sources), the State must demonstrate that it has analyzed the potential for shifts in production from the regulated sources to unregulated or less stringently regulated sources in the same State as well as in other States and that the State is not including reductions attributable to sources that may shift emissions to such unregulated or less regulated sources.

d. Emissions Inventories and Demonstrating Reductions

To quantify emissions reductions attributable to controls on non-EGUs, the States must submit both baseline and projected control emissions inventories for the applicable implementation years. We have issued many guidance documents and tools for preparing such emissions inventories, some of which apply to specific sectors States may choose to control.[110] While much of that guidance is applicable to today's rulemaking, there are some key differences between quantification of emissions reduction requirements under a SIP designed to help achieve attainment with a NAAQS and emissions reduction requirements under a SIP designed to reduce emissions that contribute significantly to a downwind State's nonattainment problem or interfere with maintenance in a downwind State. Because States are taking actions as a result of their impact on other States, and because the impacted States have no authority to reduce emissions from other States, the emissions reduction estimates become even more important. (For a complete discussion, see 69 FR 32693; June 10, 2004.)

Specifically, when we review CAIR SIPs for approvability, we intend to review closely the emissions inventory projections for non-EGUs to evaluate whether emissions reduction estimates are correct. We intend to review the accuracy of baseline historical emissions for the subject sources, assumptions regarding activity and emissions growth between the baseline year and 2010[111] and 2015, and assumptions about the effectiveness of control measures.

Before describing the specific steps involved in this quantification process, EPA notes that a few commenters objected to the proposed requirements as arbitrary restrictions intended to discourage States' discretion in imposing control measures on non-EGUs since these requirements would use what the commenters describe as extremely conservative emissions baseline and emissions reduction estimates. No commenter refuted EPA's explanation, noted above, of the need for stringent requirements to ensure greater accuracy of emission inventories and greater certainty of reduction estimates used in SIPs addressing transported pollutants. The EPA maintains that the need for more accurate inventories and more certain reduction estimates justifies the requirements discussed below. Further, no commenter provided an alternate method of addressing EPA's concerns about the development of such inventories and reduction estimates. Thus, EPA is finalizing its proposed approach.

i. Historical Baseline

To quantify non-EGU reductions, as the first step, a historical baseline must be established for emissions of SO_2 or NO_X from the non-EGU source(s) in a recent year. The historical baseline inventory should represent actual emissions from the sources prior to the application of the controls. We expect that States will choose a representative year (or average of several years) during 2002–2005 for this purpose.

The requirements for estimating the historical baseline inventory that follow reflect EPA's view that, when States assign emissions reductions to non-EGU sources, achievement of those reductions should carry a high degree of certainty, just as EGU reductions can be quantified with a high degree of certainty in accordance with the applicable part 75 monitoring requirements. Because the non-EGU emissions reductions are estimated by subtracting controlled emissions from a projected baseline, if the historical baseline overestimates actual emissions, the estimated reductions could be higher than the actual reductions achieved.

For non-EGU sources that are subject to part 75 monitoring requirements, historical baselines must be derived from actual emissions obtained from part 75 monitored data. For non-EGU sources that do not have part 75 monitoring data, historical baselines must be established that estimate actual

[110] The many EPA guidance documents and tools for preparing emission inventory estimates for SO_2 and NO_X are available at the following Web sites: *http://www.epa.gov/ttn/chief/net/general.html*, *http://www.epa.gov/ttn/chief/eiip/techreport/*, *http://www.epa.gov/ttn/chief/publications.html#general*, *http://www.epa.gov/ttn/chief/software/index.html*, and *http://www.epa.gov/ttn/chief/efinformation.html*.

[111] The 2010 modeling date is relevant for both SO_2 and NO_X even though NO_X requirements begin in 2009. See Section IV for discussion.

emissions in a way that matches or approaches as closely as possible the certainty provided by the part 75 measured data for EGUs. For these sources, States must estimate historical baseline emissions using source-specific or category-specific data and assumptions that ensure a source's or source category's actual emissions are not overestimated.

To determine the baseline for sources that do not have part 75 measured data, States must use emission factors that ensure that emissions are not overestimated (*e.g.*, emission factors at the low end of a range when EPA guidance presents a range) or the State must provide additional information that shows with reasonable confidence that another value is more appropriate for estimating actual emissions. Other monitoring or stack testing data can be considered, but care must be taken not to overestimate baselines. If a production or utilization factor is part of the historical baseline emissions calculation, a factor that ensures that emissions are not overestimated must be used, or additional data must be provided. Similarly, if a control or rule effectiveness factor enters into the estimate of historical baseline emissions, such a factor must be realistic and supported by facts or analysis. For these factors, a high value (closer to 100 percent control and effectiveness) ensures that emissions are not overestimated.

ii. Projections of 2010 and 2015 Baselines

The second step in quantifying SO_2 or NO_X emissions reductions for non-EGUs is to use the historical baseline emissions and project emissions that would be expected in 2010 and 2015 without the CAIR. This step results in the 2010 and 2015 baseline emissions estimates.

The EPA proposed and requested comment on two procedures for estimating the future baselines: one relies on projections based on a number of estimated parameters; the second uses the lower of this projection and actual historical emissions. Today, EPA finalizes the second approach for determining 2010 and 2015 emissions baselines.

To estimate future emissions, States must use state-of-the-art methods for projecting the source or source category's economic output. Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source and must be consistent with both national projections and relevant official planning assumptions, including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are themselves inconsistent with official U.S. Census projections of population or with energy consumption projections contained in the most recent Annual Energy Outlook published by the U.S. Department of Energy, then adjustments must be made to correct the inconsistency, or the SIP must demonstrate how the official planning assumptions are more accurate. If the State expects changes in production method, materials, fuels, or efficiency to occur between the baseline year and 2010 or 2015, the State must account for these changes in the projected 2010 and 2015 baseline emissions. For example, if a source has publicly announced a change or applied for a permit for a change, it should be reflected in the projections. The projection must also reflect any adopted regulations that are ineligible control measures and that will affect source emissions.

As stated above, EPA is requiring States to use the lower of historical baseline emissions or projected 2010 or 2015 emissions, as applicable, for a source category. This is because changes in production method, materials, fuels, or efficiency often play a key role in changes in emissions. Because of factors such as these, emissions can often stay the same or even decrease as productivity within a sector increases. These factors that contribute to emission decreases can be very difficult to quantify. Underestimating the impact of these types of factors can very easily result in a projection for increased emissions within a sector, when a correct estimate will result in a projection for decreased emissions within the sector. A few commenters opposed this methodology as arbitrary but failed to explain why EPA's concerns, as described above, are not valid. Commenters also failed to propose other methodologies for addressing these concerns. Thus, EPA is finalizing the use of this second methodology.

iii. Controlled Emissions Estimates for 2010 and 2015

The third step is to develop the 2010 and 2015 controlled emissions estimates by assuming the same changes in economic output and other factors listed above but adding the effects of the new controls adopted for the purpose of meeting the CAIR. The controls may take the form of regulatory requirements, *e.g.*, emissions caps, emission rate limits, technology requirements, or work practice requirements. The State's estimate of the effect of the control regulations must be realistic in light of the specific provisions for monitoring, reporting, and enforcement and experience with similar regulatory approaches.

In addition, the State's analysis must examine the possibility that the controls may cause production and emissions to shift to unregulated or less stringently regulated sources in the same State or another State. If all sources of a source category (defined to include all sources where any aspect of production is reasonably interchangeable) within the State are regulated with the same stringency and compliance assurance provisions, the analysis of production and emissions shifts need only consider the possibility of shifts to other States. If only a portion of a source category within a State is regulated, the analysis must also include any in-State shifting. In estimating controlled emissions in 2010 and 2015, assumptions regarding control measures that are not eligible for CAIR reduction credit must be the same as in the 2010 and 2015 baseline estimates. For example, a State may not take credit for reductions in the sulfur content of nonroad diesel fuel that are required under the recent Federal nonroad fuel rule (69 FR 38958; June 29, 2004). By including the effect of this Federal rule in both the baseline and controlled emissions estimates for 2010 and 2015, the State will appropriately exclude this ineligible reduction when it subtracts the controlled emissions estimates from the baseline emissions estimates.

The method that we are adopting today specifies the 2010 and 2015 emissions reductions which can be counted toward satisfying the CAIR. The method requires the use of the historical baseline or the baseline emission estimates, whichever is lower. That is, the reduction is calculated as follows: (i) For 2010, the difference between the lower of historical baseline or 2010 baseline emissions estimates and the 2010 controlled emissions estimates, minus any emissions that may shift to other sources rather than be eliminated; and (ii) for 2015, the difference between the lower of historical baseline or 2015 baseline emissions estimates and the 2015 controlled emissions estimates, minus any emissions that may shift to other sources rather than be eliminated.

4. Controls on Non-EGUs Only

Although we stated that we believe it is unlikely States may choose to control only non-EGUs, we proposed in the CAIR SNPR provisions for determining

the specified emissions reductions that must be obtained if States pursue this alternative, and we adopt those provisions today. The reason we think it is unlikely is based on States' emissions profiles. Most SO_2 emissions are from EGUs and therefore it is unlikely that a State can achieve the required emissions reductions without regulating EGUs to some degree. In addition, SO_2 emissions reductions from EGUs are highly cost effective. States that choose this path must ensure that the amount of non-EGU reductions is equivalent to all of the emissions reductions that would have been required from EGUs had the State chosen to assign all the emissions reductions to EGUs. For SO_2 emissions, this amount in 2010 would be 50 percent of a State's title IV SO_2 allocations for all units in the State and, for 2015, 65 percent of such allocations. For NO_X emissions, this amount would be the difference between a State's EGU budget for NO_X under the CAIR and its NO_X baseline EGU emissions inventory as projected in the Integrated Planning Model (IPM) for 2010 and 2015, respectively.[112]

In addition, the same requirements described elsewhere in this part of today's preamble regarding the eligibility of non-EGU reductions, emissions control and monitoring, emissions inventories and demonstration of reductions, will apply to the situation where a State chooses to control only non-EGUs.

5. Use of Banked Allowances and the Compliance Supplement Pool

In the CAIR NPR, EPA stated that States may allow EGUs to demonstrate compliance with the State EGU SO_2 budget by using title IV allowances (i) that were banked, or (ii) that were obtained in the current year from sources in other States (69 FR 4627). The EPA adopts this provision in today's action. The EPA adopts a similar provision for the use of banked NO_X SIP Call allowances (pre-2009) to demonstrate compliance with the State EGU ozone season NO_X budget. See also the CAIR NPR (69 FR 4633). Therefore, State rules may allow the use of pre-2010 title IV and pre-2009 NO_X SIP Call allowances banked in the title IV and NO_X SIP Call trading programs for compliance in the CAIR. States participating in the EPA-administered CAIR trading programs must allow the use of these pre-2010 title IV allowances or pre-2009 NO_X SIP Call allowances in accordance with EPA's model trading rules.

Additionally, States with annual NO_X reduction requirements may use compliance supplement pool (CSP) allowances as described in sections V and VIII. Distribution of the CSP is essentially the same as the process used in the NO_X SIP Call, through one or both of two mechanisms. States may distribute CSP allowances on a pro-rata basis to sources that implement NO_X control measures resulting in reductions in 2007 or 2008 that are beyond what is required by any applicable State or Federal emissions limitation (early reductions). The second CSP distribution mechanism that a State can use is to issue CSP allowances based on the demonstration of a need for an extension of the 2009 deadline for implementing emission controls. The demonstration must show unacceptable risk either to a source's own operation or its associated industry—for EGUs, power supply reliability, for non-EGUs risk comparable to that described for the electricity industry. See also 63 FR 57356 for further discussion of these points.

Pre-2010 title IV SO_2 allowances, pre-2009 NO_X SIP Call allowances and CAIR annual NO_X CSP allowances can all be counted toward a States efforts to achieve its CAIR reduction obligations regardless of whether the CAIR trading programs are used or not.

B. State Implementation Plan Schedules

1. State Implementation Plan Submission Schedule

In the NPR, we proposed to require States to submit SIPs to address interstate transport in accordance with the provisions of this rule approximately 18 months from the date of this final rule (69 FR 4624). After careful consideration of the comments we received concerning this issue, we have concluded that States should submit SIPs to satisfy this final rule as expeditiously as possible, but no later than 18 months from the date of today's action. Under this schedule, upwind States' transport SIPs to meet CAA section 110(a)(2)(D) will be due before the downwind States' $PM_{2.5}$ and 8-hour ozone nonattainment area SIPs under CAA section 172(b). We expect that the downwind States' 8-hour ozone nonattainment area SIPs will be due by June 15, 2007, and their $PM_{2.5}$ nonattainment SIPs will be due by April 5, 2008.[113]

We believe that this sequence for SIP submissions to address upwind interstate transport and downwind nonattainment areas is consistent both with the applicable provisions of the CAA and with sound policy objectives. The CAA provides for this sequence of submissions in section 110(a)(1) and (a)(2), which provide that the submittal period for SIPs required by section 110(a)(2)(D) runs from the earlier date of the NAAQS revision, and in section 172(b), which provides that the submittal period for the nonattainment area SIPs runs from the later date of designation. Clean Air Act section 110(a)(1) requires each State to submit a SIP to EPA "within 3 years * * * after the promulgation of a [NAAQS] (or any revision thereof)." Section 110(a)(2) makes clear that this SIP must include, among other things, provisions to address the requirements of section 110(a)(2)(D). We read these provisions together to require that each upwind State must submit, within 3 years of a new or revised NAAQS, SIPs that address the section 110(a)(2)(D) requirement. By contrast, the schedule provided in section 172(b) is only applicable to the nonattainment area SIP requirements.

Section 110(a) imposes the obligation upon States to make a submission, but the contents of that submission may vary depending on the facts and circumstances. In particular, the data and analytical tools available at the time the section 110(a)(2)(D) SIP is developed and submitted to EPA necessarily affect the content of the submission. Where, as here, the data and analytical tools to identify a significant contribution from upwind States to nonattainment areas in downwind States are available, the State's SIP submission must address the existence of the contribution and the emission reductions necessary to eliminate the significant contribution. In other circumstances, however, the tools and information may not be available. In such circumstances, the section 110(a)(2)(D) SIP submission should indicate that the necessary information is not available at the time the submission is made or that, based on the information available, the State believes that no significant contribution to downwind nonattainment exists. EPA can always act at a later time after the initial section 110(a)(2)(D) submissions to issue a SIP call under section 110(k)(5) to States to revise their SIPs to provide for additional emission controls to satisfy the section 110(a)(2)(D) obligations if such action were

[112] See "Technical Support Document for the Clean Air Interstate Rule Notice of Final Rulemaking; Regional and State SO_2 and NO_X Emissions Budgets" for tables containing information to calculate these amounts for both SO_2 and NO_X.

[113] By statute, the date for submission of nonattainment area SIPs is to be no later than 3 years from the date of nonattainment designation. Section 172(b).

warranted based upon subsequently-available data and analyses. This is precisely the circumstance that was presented at the time of the NO_X SIP Call in 1998 when EPA issued a section 110(k)(5) SIP call to states regarding their section 110(a)(2)(D) obligations on the basis of new information that was developed years after the States' SIPs had been previously approved as satisfying section 110(a)(2)(D) without providing for additional controls since the information available at the earlier point in time did not indicate the need for such additional controls.

Not only is this sequencing consistent with the CAA, it is consistent with sound policy considerations. The upwind reductions required by today's action will facilitate attainment planning by the States affected by transport downwind. Rather than being "premature" as some commenters suggested, EPA's understanding of the data and models leads the Agency to believe that requiring the States to address the upwind transport contribution to downwind nonattainment earlier in the process as a first step is a reasonable approach and is fully consistent with the statutory structure. This approach will allow downwind States to develop SIPs that address their share of emissions with knowledge of what measures upwind States will have adopted. In addition, most of the downwind States that will benefit by today's rulemaking are themselves significant contributors to violations of the standards further downwind and, thus, are subject to the same requirements as the States further upwind. The reductions these downwind States must implement due to their additional role as upwind States will help reduce their own $PM_{2.5}$ and 8-hour ozone problems on the same schedule as emissions reductions for the upwind States. We believe that providing 18 months from the date of today's action for States to submit the transport SIPs required by this rule is appropriate and reasonable, for the reasons discussed more fully below.

a. The EPA's Authority To Require Section 110(a)(2)(D) Submissions in Accordance With the Schedule of Section 110(a)(1)

A number of commenters objected to EPA's proposal to require States to submit the transport SIPs on the schedule set forth in section 110(a)(1). The commenters argued that section 110(a)(1) does not apply to the requirements of section 110(a)(2)(D), because the former refers to plans that States must adopt "to implement, maintain, and enforce" the NAAQS "within" the State, whereas the latter refers to plans that prevent emissions that affect nonattainment or maintenance of the NAAQS in places outside the State. According to the commenters, because section 110(a)(1) SIPs purportedly need not address the interstate transport issues governed by section 110(a)(2)(D), the States have no current obligation to prevent such interstate transport and, by extension, there is no basis for the CAIR at this time.

The EPA disagrees with the commenters. A State's SIP must of course provide for "implementation, maintenance, and enforcement" of the NAAQS "within" the State because States lack authority to impose requirements on sources in other States; *i.e.*, any plan submitted by a State will necessarily be applicable to sources "within" that State. The CAA, however, also requires that such SIPs must be submitted to EPA no later than three years after promulgation of a new or revised NAAQS and must contain adequate provisions regarding interstate transport from emission sources within the State in compliance with section 110(a)(2)(D). The explicit terms of the statute provide for the State submission of initial SIPs after promulgation of a new NAAQS, and provide that such SIPs should address interstate transport. Section 110(a)(1) provides that:

> [e]ach State shall * * * adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) * * * a plan which provides for implementation, maintenance, and enforcement of such primary standard in each [area] within such State.

Section 110(a)(2) provides, in relevant part, that:

> [e]ach implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall * * * (D) contain adequate provisions—(i) prohibiting * * * any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [the NAAQS].

By referencing each implementation plan in section 110(a)(2), it is clear that the implementation plans required under section 110(a)(1) must satisfy the requirements of section 110(a)(2)(D). Thus, the plain meaning of these provisions, read together, is that SIP submissions are required within 3 years of promulgation of a new or revised NAAQS, and that the SIP submissions must meet the requirements of section 110(a)(2)(D).

By contrast, other requirements of section 110(a)(2) are not triggered by EPA's promulgation of a new or revised NAAQS, but rather by EPA's final designation of nonattainment areas. For example, section 110(a)(2)(I) by its terms indicates that State SIPs must meet that requirement not on the schedule of section 110(a)(1), but instead on the schedule of section 172(b).

The explicit distinction in the statute between requirements that States must meet on the schedule of section 110(a)(1) versus the schedule of section 172(b) reinforces the conclusion that States are to meet the initial requirements of section 110(a)(2)(D) within the schedule of section 110(a)(1).

In this context, it is important to note that the requirements of section 110(a)(1) plans are not limited to areas designated attainment, nonattainment, or unclassifiable.[114] Section 110(a)(1) requires each State to develop and submit a plan that provides for the implementation, maintenance, and enforcement of the NAAQS in "each" area of the State. Similarly, the requirement in section 110(a)(2)(D) that SIPs must prohibit interstate transport of air pollutants that significantly contribute to downwind nonattainment is not limited to any particular category of formally designated areas in the State. The provisions apply to emissions activities that occur anywhere in a state, regardless of its designation. If, as the commenters suggested, the requirements of section 110(a)(2)(D) plans are governed not by section 110(a)(1), but rather by the schedule of section 172, that would lead to the absurd result that upwind States need only reduce emissions from designated nonattainment areas to prevent significant contribution to nonattainment or interference with maintenance in a downwind State. Given that large portions of many upwind States may be designated as attainment for the NAAQS for local purposes, yet still contain large sources of emissions that affect downwind States through interstate transport, EPA believes that Congress could not have intended the prohibitions of section 110(a)(2)(D) to apply only to nonattainment areas in upwind States.[115] Indeed, the language of

[114] Under section 107(d), EPA is required to identify all areas of each State as falling into one of these three categories.

[115] The EPA notes that under the provisions of section 107(d), certain portions of an upwind State that are monitoring attainment may be designated nonattainment because they contribute to violations of the NAAQS in a "nearby" area. Nevertheless,

section 110(a)(2) itself does not support such an interpretation. Therefore, the alternative schedule provided in section 172(b) applicable only to nonattainment areas cannot be the schedule that governs the State submission of transport SIPs. This leaves the schedule of section 110(a)(1) as the only appropriate schedule in the case of SIPs following EPA promulgation of new or revised NAAQS.

The commenters also disputed that the schedule of section 110(a)(1) applies to the section 110(a)(2)(D) requirement because there are other elements of section 110(a)(2) that States could not meet on that schedule. As an example, the commenters pointed to section 110(a)(2)(I) which requires States to meet certain obligations imposed upon designated nonattainment areas. As formal designation under the generally applicable provisions of section 107(d) could take up to 3 years following promulgation of a new or revised NAAQS, and section 172(b) allows up to 3 additional years for State submission of nonattainment area SIPs, the commenters concluded that States could not meet section 110(a)(2)(I) on the schedule of section 110(a)(1). From the fact that States could not meet all of the elements of the section 110(a)(2) requirement within 3 years, the commenters inferred that EPA cannot require States to meet any of the requirements in section 110(a)(2), including section 110(a)(2)(D).

The EPA disagrees with the commenters' approach to the interpretation of the statute. The EPA agrees that there are certain provisions of section 110(a)(2) that are governed not by the schedule of section 110(a)(1), but instead by the timing requirement of section 172(b), *e.g.*, section 110(a)(2)(I). Other items in section 110(a)(2), however, do not depend upon prior designations in order for States to develop a SIP to begin to comply with them, *e.g.*, section 110(a)(2)(B) (pertaining to monitoring); section 110(a)(2)(E) (stipulating that States must provide for adequate resources); and section 110(a)(2)(K) (pertaining to modeling).

Most important, section 110(a)(2)(D) itself does not apply only to impacts on downwind nonattainment areas, and thus does not presuppose prior designations in either upwind or downwind States, or suggest that section 110(a)(2)(D) is somehow inapplicable until the submission of nonattainment area plans. By its explicit terms, section 110(a)(2)(D) requires States to prohibit emissions from "any source or other types of emissions activity within the State" that "contribute to nonattainment in, or interfere with maintenance by" any other State. A plain reading of the statute indicates that the emissions at issue can emanate from any portion of an upwind State and that the impacts of concern can occur in any portion of the downwind State.

While EPA agrees that there is overlap between the submission requirements of sections 110(a)(1) and (a)(2) and section 172(c), EPA believes that the plain language of these sections requires States to submit plans that comply with section 110(a)(2)(D) prior to the deadline for nonattainment area SIPs established by section 172, and that there is nothing that compels a contrary conclusion in the language of section 172. Section 172(b) provides that State plans for nonattainment areas must meet "*the applicable* requirements of [section 172(c)] and section 110(a)(2)" (emphasis added). Thus, the statute itself explicitly indicates that the State submissions for nonattainment plans must meet those requirements of section 110(a)(2) that are "applicable," not each requirement regardless of applicability. In the current situation, EPA believes that it is appropriate to view the CAA as requiring States to make a submission to meet the requirement of section 110(a)(2)(D) in accordance with the schedule of section 110(a)(1), rather than under the schedule for nonattainment SIPs in section 172(b).[116]

b. The EPA's Authority To Require Section 110(a)(2)(D) Submissions Prior to Formal Designation of Nonattainment Areas Under Section 107

A number of commenters argued that EPA has no authority to require States to comply with section 110(a)(2)(D) until after EPA formally designates nonattainment areas for the $PM_{2.5}$ and 8-hour ozone NAAQS.[117] These commenters claimed that section 107(d) and provisions of the Transportation Equity Act for the 21st Century (TEA–21) governing the designation of $PM_{2.5}$ and 8-hour ozone nonattainment areas preclude EPA from interpreting the CAA to require States to submit SIPs that comply with section 110(a)(2)(D) on the schedule contemplated by section 110(a)(1). In the view of the commenters, EPA could not reasonably expect States to determine whether and to what extent their in-State sources significantly contributed to nonattainment in other States within the initial 3-year timeframe, in advance of nonattainment area designations. According to the commenters, section 107(d) and TEA–21 negate the timing requirements of section 110(a)(1), so that States have no current obligation to address interstate transport and thus there is no basis for today's action.

The EPA disagrees with the commenters' view of the interaction of section 110 and section 107(d). The statute does not require EPA to have completed the designations process before the Agency or a State could assess the existence of, or extent of, significant contribution from one State to another. In addition, the technical approach by which EPA determines significant contribution from upwind to downwind States does not depend upon the prior completion of the designation process.

The EPA believes that the statute does not compel the conclusion that States may postpone compliance with section 110(a)(2)(D) until some future point after completion of the designation process. As discussed above, a reading of the plain language of sections 110(a)(1) and 110(a)(2) indicates that States must adopt and submit a plan to EPA within 3 years after promulgation of a new or revised NAAQS (the same time at which designations are generally due under section 107), and that each

there will be portions of upwind States that include emissions sources that are not in designated nonattainment areas, whether because of local monitored nonattainment, or because of contribution to a nearby nonattainment area, yet these portions of the upwind State may contain sources that cause emissions that States must address to meet the requirements of section 110(a)(2)(D).

[116] As noted earlier, what will be needed to meet section 110(a)(2) may vary, depending upon the specific facts and circumstances surrounding a new or revised NAAQS. *See, e.g., Proposed Requirements for Implementation Plans and Ambient Air Quality Surveillance for Sulfur Oxides (Sulfur Dioxide) National Ambient Air Quality Standard*, 60 FR 12492, 12505 (March 7, 1995). In the context of a proposed 5-minute NAAQS for SO_2, EPA tentatively concluded that existing SIP provisions for the 24-hour and annual SO_2 NAAQS were probably sufficient to meet many elements of section 110(a)(2). The EPA did not explicitly discuss State obligations under section 110(a)(2)(D) for the 5-minute NAAQS in the proposal, but the nature of the pollutant, the sources, and the proposed NAAQS are such that interstate transport would not have been the critical regionwide concern that it is for the $PM_{2.5}$ and 8-hour ozone NAAQS. The EPA does not expect States to make SIP submissions establishing emission controls for the purpose of addressing interstate transport without having adequate information available to them.

[117] The EPA notes that the 8-hour ozone designations became effective on June 15, 2004, and that the $PM_{2.5}$ designations will become effective on April 5, 2005. The EPA believes that the issue raised by the commenters is thus moot with respect to both the 8-hour ozone and $PM_{2.5}$ nonattainment areas because those designations are now complete.

such plan must meet the applicable requirements of section 110(a)(2)(D).[118]

Significantly, neither section 110(a)(1) nor section 110(a)(2)(D) are limited to "nonattainment" areas. By their explicit terms, both provisions apply to all areas within the State, regardless of whether EPA has formally designated the areas as attainment, nonattainment, or unclassifiable, pursuant to section 107(d). As to causes, section 110(a)(2)(D) compels States to address any "emissions activity within the State," not solely emissions from formally designated nonattainment areas, nor does it in any other terms suggest that designations of upwind areas must first have occurred. As to impacts, section 110(a)(2)(D) refers only to prevention of "nonattainment" in other States, not to prevention of nonattainment in designated nonattainment areas or any similar formulation requiring that designations for downwind nonattainment areas must first have occurred. By comparison, other provisions of the CAA do clearly indicate when they are applicable to designated nonattainment areas, rather than simply to nonattainment more generally (*e.g.*, sections 107(d)(1)(A)(i), 181(b)(2)(A), and 211(k)(10)(D)). Because section 110(a)(2)(D) refers only to "nonattainment," not to "nonattainment areas," EPA concludes that the section does not presuppose the existence of formally designated nonattainment areas, but rather to ambient air quality that does not attain the NAAQS.

The EPA believes that this plain reading of the provisions is also the most logical approach. A reading that section 110(a)(2)(D) means that States have no obligation to address interstate transport unless and until there are formally designated nonattainment areas pursuant to section 107 would be inconsistent with the larger goal of the CAA to encourage expeditious attainment of the NAAQS. In this immediate instance, currently available air quality monitoring data and modeling make it clear that many areas of the eastern portion of the country are in violation of both the $PM_{2.5}$ and 8-hour ozone NAAQS. Air quality modeling studies generally available to the States demonstrate that, and quantify the extent to which, SO_2 and NO_X emissions from sources in upwind States are contributing to violations of the $PM_{2.5}$ and 8-hour ozone NAAQS in downwind States.

Following the example of the NO_X SIP Call, EPA has an effective analytical approach to determine whether that interstate contribution is significant, in accordance with section 110(a)(2)(D). Thus, EPA currently has the information and tools that it needs to determine what the initial $PM_{2.5}$ and 8-hour ozone SIPs from upwind States should include as appropriate NO_X and SO_2 emissions reductions in order to prevent emissions that significantly contribute to nonattainment in downwind States. The designation process under section 107 is the means by which States and EPA decide the precise boundaries of the nonattainment areas in the downwind States. Both $PM_{2.5}$ and ozone are regional phenomena, however, and information as to the precise boundaries of nonattainment areas is not necessary to implement the requirements of section 110(a)(2)(D) for these pollutants. Consequently, it was not necessary for EPA to wait until after completion of formal designation of nonattainment area boundaries before undertaking this rulemaking. Moreover, EPA believes that taking action now will achieve public health protections more quickly as it will enable States to develop implementation plans more expeditiously and efficiently.

The EPA disagrees with the commenters' view of the relationship between section 110(a)(2) and section 107 and their apparent view of the method by which EPA analyzes whether there is a contribution from an upwind State to a downwind State, and whether that contribution is significant.

The EPA has, in this case, used the detailed data from the extensive network of air quality monitors to identify which States have monitors that are currently showing violations of the $PM_{2.5}$ and 8-hour ozone NAAQS. In the NPR, EPA stated that based upon data for the 3-year period from 2000–2002, "120 counties with *monitors* exceed the annual $PM_{2.5}$ NAAQS and 297 counties with *monitor* readings exceed the 8-hour ozone NAAQS" (69 FR 4566, 4581; January 30, 2004) (emphasis added). The geographic distribution of monitors with data registering current violations indicated that there is nonattainment of both the $PM_{2.5}$ and 8-hour ozone NAAQS throughout the eastern United States and in other portions of the country including California. For analyses of future ambient conditions, EPA used various modeling tools to predict that, in the absence of the CAIR, there would be counties with monitors that would continue to show violations of the $PM_{2.5}$ and 8-hour ozone NAAQS in 2010 and 2015. In subsequent steps, EPA analyzed whether the emissions from upwind States contributed to the ambient conditions at the monitors registering NAAQS violations in downwind States, and thereafter determined whether that contribution would be significant pursuant to section 110(a)(2)(D).

In none of these steps, however, did EPA need to know the precise boundaries of the nonattainment areas that may ultimately result from the section 107 designation process. The determination of attainment status in a given county is based primarily upon the monitored ambient measurements of the applicable pollutant in the county. Thus, it is the readings at the monitors that are the appropriate information for EPA to evaluate in assessing current and future interstate transport at that monitor in that county, not the exact dimensions of the area that may ultimately comprise the formally designated nonattainment area. The ultimate size of nonattainment areas will have a bearing on other components of the State's nonattainment area SIP. The size of such nonattainment areas, however, is not meaningful in assessing whether interstate transport from another State or States has an impact at a violating monitor, and whether the transport significantly contributes to nonattainment, that the other State or States should address to comply with section 110(a)(2)(D). Thus, EPA believes that basing the significant contribution analysis upon the counties with monitors that register nonattainment, without regard to the precise boundaries of the nonattainment areas that may ultimately result from the formal designation process under section 107, is the proper approach.

For similar reasons, EPA also disagrees with the commenters' assertion that the provisions of TEA–21 preclude EPA's interpretation of the timing requirements of sections 110(a)(1) and 110(a)(2). However, TEA–21 did address the need to create a new network of monitors to assess the geographic scope and location of $PM_{2.5}$ nonattainment. Also, TEA–21 did provide that such a network should be up and running by December 31, 1999. TEA–21 did lay out a schedule for the collection of data over a period of 3 years in order to make subsequent regulatory decisions. From these facts, the commenters concluded that TEA–21 necessarily contradicts EPA's position that States must now take action to address significant contribution to downwind nonattainment in their

[118] For reasons discussed in more detail above, EPA interprets the requirement of section 110(a)(2)(D) to be among those that Congress intended States to meet within the 3-year timeframe of section 110(a)(1). The EPA agrees that other requirements, such as those of section 110(a)(2)(I), are subject to the different timing requirements of section 172(b).

initial section 110(a)(1) SIPs, merely because the initial 3-year period following the promulgation of a new or revised NAAQS specified in section 110(a)(1) has expired.

The EPA believes that nothing in TEA–21 explicitly or implicitly altered the timing requirements of section 110(a)(1) for compliance with section 110(a)(2)(D), although EPA recognizes that the data from monitoring funded by that Act contributed to the Agency's development of the SIP requirements in today's rulemaking. The provisions of TEA–21 pertained to the installation of a network of monitors for $PM_{2.5}$, and to the timing of designation decisions for $PM_{2.5}$ and 8-hour ozone. To be specific, TEA–21 had two primary purposes for the new NAAQS: (1) To gather information "for use in the determination of area attainment or nonattainment designations" for the $PM_{2.5}$ NAAQS; and (2) to ensure that States had adequate time to consider guidance from EPA concerning "drawing area boundaries prior to submitting area designations" for the 8-hour ozone NAAQS. TEA–21 sections 6101(b)(1) and (2). The EPA interprets the third stated purpose of TEA–21 to refer to ensuring consistency of timing between the Regional Haze program requirements and the $PM_{2.5}$ NAAQS requirements. With respect to timing, TEA–21 similarly only referred to the dates by which States and EPA should take their respective actions concerning designations. For $PM_{2.5}$, TEA–21 provided that States were required "to submit designations referred to in section 107(d)(1) * * * within 1 year after receipt of 3 years of air quality monitoring data." TEA–21 section 6102(c)(1). For 8-hour ozone, TEA–21 required States to submit designation recommendations within 2 years after the promulgation of the new NAAQS, and required EPA to make final designations within 1 year after that (TEA–21 sections 6103(a) and (b)). In all of these provisions, TEA–21 only addresses SIP timing in the context of the designation process of section 107(d). As explained in more detail above, EPA does not believe that the timing of section 110(a)(1) and section 110(a)(2)(D) obligations depend upon the prior designation of areas in accordance with section 107(d).

The EPA also notes that legislation subsequent to TEA–21 further supports this conclusion. In the 2004 Consolidated Appropriations Act, Congress further amended section 107 to provide specific dates by which States and EPA must make $PM_{2.5}$ designations. 42 U.S.C. 7407 note. The Act now requires States to have made their initial recommendations for $PM_{2.5}$ designations by February 15, 2004, and requires EPA to take action on those recommendations and make its final designation decisions no later than December 31, 2004. Again, these requirements pertain only to formal designations, and do not directly affect the obligations of States to meet other SIP requirements. Neither TEA–21 nor the 2004 Appropriations Act language altered the section 110(a)(1) schedule for compliance with section 110(a)(2)(D).

The commenters suggested that because Congress provided more time for making formal designations pursuant to section 107, it necessarily follows that States should not have to meet the requirements of section 110(a)(2)(D) on the schedule of section 110(a)(1). The EPA believes that Congress did not, through TEA–21 or other actions, alter the existing submission schedule for SIPs to address interstate transport. By contrast, Congress did explicitly alter the schedule for submission of plan revisions to address Regional Haze. From this, EPA infers that Congress did not intend EPA to delay action to address the issue of interstate transport for the 8-hour or $PM_{2.5}$ NAAQS. Thus, EPA must still ensure that States submit SIPs in accordance with the substantive requirements of section 110(a)(2)(D). However, because EPA and the States now have the data and analyses to establish the presence and magnitude of interstate transport, in part through the monitoring data gathered pursuant to TEA–21, the Agency believes that that it is now appropriate to require States to address interstate transport at this time in the manner set forth in today's rule.

c. The EPA's Authority To Require Section 110(a)(2)(D) Submissions Prior to State Submission of Nonattainment Area Plans Under Section 172

Some commenters suggested that EPA cannot determine the existence of a significant contribution from upwind States to downwind States until EPA actually receives the nonattainment area SIPs from each State and evaluates how much "residual" nonattainment remains. If the reasoning of these commenters were adopted, downwind States would have to construct SIPs to attain the NAAQS without first knowing what upwind States might ultimately do to reduce interstate transport. Presumably, the theory is that the downwind States may choose to control their own local emissions sources more aggressively so that sources in upwind States could avoid installation of highly cost-effective emission controls, notwithstanding the continued significant impacts of emissions from upwind sources on downwind States. Alternatively, the rationale may be that EPA should wait until submission of upwind State nonattainment area SIPs to discover whether and to what degree the SIPs address interstate transport to downwind States.

For reasons already discussed more fully above, EPA does not believe that the statute requires a "wait and see" approach to discover what, if anything, States may ultimately do to address the problem of regional interstate transport. Section 110(a)(1) requires "each" State to submit a SIP within 3 years after a new or revised NAAQS addressing the requirements of section 110(a)(2)(D). When the data and the analyses needed to establish the existence of interstate transport of pollutants and to determine whether there is a significant contribution to nonattainment or interference with maintenance by one State in another State are available, as here after the monitoring funded by TEA–21, EPA believes that it may act upon that information prior to State SIP submissions to ensure that States address such contribution expeditiously, as it is doing in this rulemaking. The EPA believes it is a better policy to assist the States to address the regional component of the nonattainment problem in a way that is equitable, timely, cost effective, and certain.

The EPA acknowledges that historically, especially in the case of 1-hour ozone, the Agency has not had the data and the analytical tools to help upwind States to address interstate transport as early in the SIP process as it is doing today for $PM_{2.5}$ and 8-hour ozone. The CAA has required States to regulate ozone or its regulatory predecessors since 1970. For many years, States and EPA focused on the adoption and implementation of local controls to bring local nonattainment areas into attainment. Thus, historically, local areas bore the burden of achieving attainment through imposition of control measures on local sources. By comparison, upwind States did not have to adopt local controls in attainment areas and typically did not adopt such controls solely to lessen the impact of their emissions on downwind States. Since 1977, the CAA has also imposed a series of local control obligations on 1-hour ozone nonattainment areas, such as RACT for stationary sources, inspection and maintenance for mobile sources, and other requirements that became increasingly more stringent, based upon the level of local nonattainment. In spite of these local control efforts, there continued to be a

widespread problem with nonattainment that resulted, in part, from unaddressed interstate transport. A lack of information and analytical tools hindered the ability of EPA and the States to address the regional interstate transport component of 1-hour ozone nonattainment, until the NO_X SIP Call in 1998. While it is thus true that the NO_X SIP Call postdated the submission of nonattainment area SIPs, this should not be construed as evidence that the statute precludes the States and EPA from addressing interstate transport earlier in the process for the 8-hour ozone and $PM_{2.5}$ NAAQS.

Given that EPA and the States indisputably have the requisite information to identify interstate transport at this stage of SIP development, EPA believes, based upon its experience in implementing the 1-hour ozone NAAQS, that it is preferable to take action under section 110(a)(2)(D) to address the regional transport component of the $PM_{2.5}$ and 8-hour ozone nonattainment problem. States, both upwind and downwind, will still have an obligation to control emissions from sources within their boundaries for the purposes of local area attainment and maintenance of the NAAQS. The EPA does not believe, however, that it is either required by the statute, or in accordance with sound policy, for the Agency to wait until submission of the nonattainment area SIPs of downwind States to discover whether or not those SIPs will control local sources sufficiently to provide for eventual attainment regardless of continued significant contribution through interstate transport from upwind States. To the contrary, past experience with the 1-hour ozone NAAQS has demonstrated that delayed action to address the interstate component of nonattainment will potentially lead to delays in attainment as downwind areas struggle to overcome the impacts of transport. Indeed, a number of scientific and technical assessments of ozone and $PM_{2.5}$ by the NRC and the Ozone Transport Assessment Group have identified addressing interstate transport as a critical issue in developing SIPs.

d. The EPA's Authority To Require Section 110(a)(2)(D) Submissions Prior to Completion of the Next Review of the $PM_{2.5}$ and 8-Hour Ozone NAAQS

Commenters also asserted that EPA should not take any action to implement the 8-hour ozone and $PM_{2.5}$ NAAQS, until completion of the next NAAQS review cycle. According to the commenters, a series of statements by EPA and others indicated an intention to take no action to implement the NAAQS until after the next review cycle, and that statutes passed by Congress confirm that EPA is to take no such action.

The EPA disagrees with the assertion that it should take no action to implement the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS until completion of the next NAAQS review. Section 110(a) explicitly requires States to begin to submit SIPS within 3 years after promulgation of a new or revised NAAQS. The CAA also requires EPA to take action upon State SIP submissions within specific timeframes. States are likewise explicitly obligated to attain existing NAAQS within certain specified timeframes. None of these basic statutory submission, review, or attainment obligations are stayed or delayed due to the fact that there may be an ongoing NAAQS review cycle. Indeed, under section 109, EPA is to review all NAAQS on an ongoing basis, every 5 years. If the mere existence of a NAAQS review cycle were grounds to suspend implementation of a NAAQS, it would undermine the very goals of the statute.

The commenters argued that certain statements made by EPA and others in guidance memoranda and elsewhere preclude EPA from taking any action to implement the $PM_{2.5}$ and 8-hour ozone NAAQS. The EPA believes that the commenters are misconstruing those statements, and that the statements merely reflect the Agency's assumption that the NAAQS review cycle would occur on the normal schedule. It would be nonsensical to suggest that, if for any reason, the NAAQS review cycle were delayed, that the CAA would permit no implementation of the existing NAAQS. Such an approach would invite and encourage inappropriate interference in the NAAQS review cycle as a means of subverting the CAA.

The commenters further argued that Congress has taken action to prevent implementation of the 8-hour ozone and $PM_{2.5}$ NAAQS pending the next NAAQS review cycle. The EPA does not see any such intention on the part of Congress. In TEA–21 and the 2004 Consolidated Appropriations Act, Congress has amended section 107 to provide specific dates by which States and EPA must make designations. Significantly, Congress did not alter the existing statute with respect to any other deadlines for SIP submissions, or with respect to implementation of the $PM_{2.5}$ and 8-hour ozone NAAQS generally. By contrast, in the 2004 Consolidated Appropriations Act, Congress did explicitly alter the date by which States must submit plan revisions to address Regional Haze. See, Section 7(A), 42 U.S.C. section 7407 note. From this explicit action, one must infer that Congress could have taken action to alter the submission date for plans to address $PM_{2.5}$ or 8-hour ozone, had it intended to alter the existing statutory scheme. Most importantly, however, Congress did not make any of the changes effected in TEA–21 or the 2004 Consolidated Appropriations Act dependent upon completion of the next NAAQS review. To the contrary, Congress directed EPA to take certain actions notwithstanding the fact that there were and are ongoing reviews of the NAAQS. From this, EPA infers that Congress did not intend EPA to defer all action to implement the existing NAAQS, including today's action to assist States to address the requirements of section 110(a)(2)(D).

e. The EPA's Authority To Require States To Make Section 110(a)(2)(D) Submissions Within 18 Months of This Final Rule

Some commenters questioned EPA's proposal to require States to make SIP submissions in response to this action as expeditiously as practicable but no later than within 18 months. A number of commenters suggested that this schedule is too short because of the magnitude or complexity of the task or because of the typical duration of State rulemaking processes. Other commenters suggested that EPA should follow the example of the NO_X SIP Call more closely and provide a shorter period than the Agency proposed.

The EPA has concluded that the proposed 18-month schedule is reasonable given the circumstances and given the scope of the actions that we are requiring States to take. We issued the $PM_{2.5}$ and 8-hour ozone NAAQS revisions in July 1997. More than 3 years have already elapsed since promulgation of the NAAQS, and States have not submitted SIPs to address their section 110(a)(2)(D) obligations under the new NAAQS. We recognize that litigation over the new $PM_{2.5}$ and 8-hour ozone NAAQS created substantial uncertainty as to whether the courts would uphold the new NAAQS, and that this uncertainty, as a practical matter, rendered it more difficult for States to develop SIPs. Moreover, in the case of $PM_{2.5}$, additional time was needed for creation of an adequate monitoring network, collection of at least 3 years of data from that network, and analysis of those data.

In addition, in the NPR, the SNPR, and today's action, we have provided States with a great deal of data and analysis concerning air quality and

control costs, as well as policy judgments from EPA concerning the appropriate criteria for determining whether upwind sources contribute significantly to downwind nonattainment under section 110(a)(2)(D). We recognize that States would face great difficulties in developing transport SIPs to meet the requirements of today's action without these data and policies. In light of these factors and the fact that States can no longer meet the original 3-year submittal date of section 110(a)(1), we believe that States need a reasonable period of time in which to comply with the requirements of today's action.

In the comparable NO_X SIP Call rulemaking, EPA provided 12 months for the affected States to submit their SIP revisions. One of the factors that we considered in setting that 12-month period was that upwind States had already, as part of the Ozone Transport Assessment Group process begun 3 years before the NO_X SIP Call rulemaking, been given the opportunity to consider available control options. Because today's action requires affected States to control both SO_2 and NO_X emissions, and to do so for the purpose of addressing both the $PM_{2.5}$ and 8-hour ozone NAAQS, we believe it is reasonable to allow affected States more time than was allotted in the NO_X SIP Call to develop and submit transport SIPs.

Another factor that we have considered is that under section 110(k)(5), the CAA stipulates that EPA may provide up to 18 months for SIP submissions to correct substantially inadequate plans. While today's action is not pursuant to section 110(k)(5), we believe that the provision provides an analogy for the appropriate schedule on which EPA should expect States to make the submission required by today's action. We believe it would not be appropriate to set a longer schedule for submission of the plan than would have been possible under section 110(k)(5) had the States submitted a plan on the original 3-year schedule contemplated in section 110(a)(1) that did not provide for the emissions reductions today's action requires. While the CAA does require States to make some SIP submissions on shorter schedules, we conclude that the complexities of the action required by today's rulemaking militate in favor of a longer schedule.[119]

[119] See, *e.g.*, section 182(a)(2)(A) (providing a 6-month schedule for submission of a revision to provide for RACT corrections); section 189(d) (providing 12 months for submission of plan revisions to ensure attainment and required emissions reductions). The former revision could be relatively limited in scope, but the latter might entail submission of a completely revised SIP.

Finally, we note that by making findings that States have thus far failed to submit SIPs to meet the requirements of section 110(a)(2)(D) for the 8-hour ozone and $PM_{2.5}$ NAAQS, EPA has an obligation to implement a Federal implementation plan (FIP) to address interstate transport no later than 24 months after that finding, if the States fail to take appropriate action. Given this schedule for the FIP obligation, EPA believes that it is reasonable to require States to take action to meet the section 110(a)(2)(D) obligation with respect to the significant contribution identified in today's rule within no more than 18 months. Such a schedule will allow States adequate time to develop submissions to meet this requirement and will afford EPA adequate time to review such submissions before the imposition of a FIP in lieu of a SIP, if necessary.

Thus, EPA has concluded that States should submit SIPs to reduce interstate transport, as required by this final action, as expeditiously as practicable but no later than 18 months from today's date. Such a schedule will provide both upwind and downwind States, and those States that are in both positions relative to other States, to develop SIPs that will facilitate expeditious attainment of the $PM_{2.5}$ and the 8-hour ozone standards.

C. What Happens If a State Fails To Submit a Transport SIP or EPA Disapproves the Submitted SIP?

1. Under What Circumstances Is EPA Required To Promulgate a FIP?

Under section 110(c)(1), EPA is required to promulgate a FIP within 2 years of: (1) finding that a State has failed to make a required submittal; or (2) finding that a submittal received does not satisfy the minimum completeness criteria established under section 110(k)(1)(A) (40 CFR part 51, appendix V); or (3) disapproving a SIP submittal in whole or in part. Section 110(c)(1) mandates that EPA promulgate a FIP unless the States corrects the deficiency and EPA approves the SIP before the time EPA would promulgate the FIP.

2. What Are the Completeness Criteria?

Any SIP submittal that is made with respect to the final CAIR requirements first would be determined to be either incomplete or complete. A finding of completeness is not a determination that the submittal is approvable. Rather, it means the submittal is administratively and technically sufficient for EPA to proceed with its review to determine whether the submittal meets the statutory and regulatory requirements for approval. Under 40 CFR 51.123 and 40 CFR 51.124 (the proposed new regulations for NO_X and SO_2 SIP requirements, respectively), a submittal, to be complete, must meet the criteria described in 40 CFR, part 51, appendix V, "Criteria for Determining the Completeness of Plan Submissions." These criteria apply generally to SIP submissions.

Under CAA section 110(k)(1) and section 1.2 of appendix V, EPA must notify States whether a submittal meets the requirements of appendix V within 60 days of, but no later than 6 months after, EPA's receipt of the submittal. If a completeness determination is not made within 6 months after submission, the submittal is deemed complete by operation of law. For rules submitted in response to the CAIR, EPA intends to make completeness determinations expeditiously.

3. When Would EPA Promulgate the CAIR Transport FIP?

The EPA views seriously its responsibility to address the issue of regional transport of $PM_{2.5}$, ozone, and precursor emissions. Decreases in NO_X and SO_2 emissions are needed in the States named in the CAIR to enable the downwind States to develop and implement plans to achieve the $PM_{2.5}$ and 8-hour ozone NAAQS and provide clean air for their residents. Thus, EPA intends to promulgate the FIP shortly after the CAIR SIP submission deadline for States that fail to submit approvable SIPs in order to help assure that the downwind States realize the air quality benefits of regional NO_X and SO_2 reductions as soon as practicable. This is consistent with Congress' intent that attainment occur in these downwind nonattainment areas "as expeditiously as practicable" (sections 181(a), 172(a)). To this end, EPA intends to propose the FIP prior to the SIP submission deadline.

The FIP proposal would achieve the NO_X and SO_2 emissions reductions required under the CAIR by requiring EGUs in affected States to reduce emissions through participation in Federal NO_X and SO_2 cap and trade programs. The EPA intends to integrate these Federal trading programs with the model trading programs that States may choose to adopt to meet the CAIR. Although EPA would be proposing FIPs for all States affected by the CAIR, EPA will only issue a final FIP for those jurisdictions that fail to respond adequately to the CAIR.

The EPA's goal is to have approvable SIPs that meet the requirements of the CAIR. We remain ready to work with the States to develop fully approvable SIPs, which would eliminate the need for EPA to promulgate a FIP.

D. What Are the Emissions Reporting Requirements for States?

The EPA believes that it is essential that achievement of the emissions reductions required by the CAIR be verified on a regular basis. Emission reporting is the principal mechanism to verify these reductions and to assure the downwind affected States and EPA that the ozone and $PM_{2.5}$ transport problems are being mitigated as required by the rule. Therefore, the final rule establishes a small set of new emission reporting requirements applicable to States affected by the CAIR, covering certain emissions data not already required under existing emission reporting regulations. The rule language also removes a current emission reporting requirement related to the NO_X SIP call, which we believe is not necessary, for reasons explained below. A number of other proposed changes in emission reporting requirements which would have affected States not subject to the final CAIR are not included in the final rule, for reasons explained below. We will repropose these other changes, with modifications, in a separate proposal to allow additional opportunity for public comment.

1. Purpose and Authority

Because we are consolidating and harmonizing the new emission reporting requirements promulgated today with two pre-existing sets of emission reporting requirements, we review here the purpose and authority for emission reporting requirements in general.

Emissions inventories are critical for the efforts of State, local, and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants such as ozone, PM, and CO. Pursuant to its authority under sections 110 and 172 of the CAA, EPA has long required SIPs to provide for the submission by States to EPA of emissions inventories containing information regarding the emissions of criteria pollutants and their precursors (*e.g.*, VOCs). The EPA codified these requirements in subpart Q of 40 CFR part 51, in 1979 and amended them in 1987.

The 1990 Amendments to the CAA revised many of the provisions of the CAA related to the attainment of the NAAQS and the protection of visibility in Class I areas. These revisions established new periodic emissions inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. For example, section 182(a)(3)(A) required States to submit an emissions inventory every 3 years for ozone nonattainment areas beginning in 1993. Similarly, section 187(a)(5) required States to submit an inventory every 3 years for CO nonattainment areas. The EPA, however, did not immediately codify these statutory requirements in the CFR, but simply relied on the statutory language to implement them.

In 1998, EPA promulgated the NO_X SIP call which requires the affected States and the District of Columbia to submit SIP revisions providing for NO_X reductions to reduce their adverse impact on downwind ozone nonattainment areas. (63 FR 57356, October 27, 1998). As part of that rule, codified in 40 CFR 51.122, EPA established emissions reporting requirements to be included in the SIP revisions required under that action.

Another set of emissions reporting requirements, termed the Consolidated Emissions Reporting Rule (CERR), was promulgated by EPA in 2002, and is codified at 40 CFR part 51 subpart A. (67 FR 39602, June 10, 2002). These requirements replaced the requirements previously contained in subpart Q, expanding their geographic and pollutant coverages while simplifying them in other ways.

The principal statutory authority for the emissions inventory reporting requirements outlined in this final rule is found in CAA section 110(a)(2)(F), which provides that SIPs must require "as may be prescribed by the Administrator * * * (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources." Section 301(a) of the CAA provides authority for EPA to promulgate regulations under this provision.[120]

2. Pre-existing Emission Reporting Requirements

As noted above, prior to this final rule, two sections of title 40 of the CFR contained emissions reporting requirements that are applicable to States: Subpart A of part 51 (the CERR) and section 51.122 in subpart G of part 51 (the NO_X SIP Call reporting requirements).

[120] Other CAA provisions relevant to this final rule include section 172(c)(3) (provides that SIPs for nonattainment areas must include comprehensive, current inventory of actual emissions, including periodic revisions); section 182(a)(3)(A) (emissions inventories from ozone nonattainment areas); and section 187(a)(5) (emissions inventories from CO nonattainment areas).

Under the NO_X SIP Call requirements in section 51.122, emissions of NO_X for a defined 5-month ozone season (May 1 through September 30) and for work weekday emissions for point, area and mobile sources that the State has subjected to emissions control to comply with the requirements of the NO_X SIP Call, are required to be reported by the affected States to EPA every year. However, emissions of sources reporting directly to EPA as part of the NO_X trading program are not required to be reported by the State to EPA every year. The affected States are also required to report ozone season emissions and typical summer daily emissions of NO_X from all sources every third year (2002, 2005, etc.) and in 2007. This triennial reporting process does not have an exemption for sources participating in the emissions trading programs. Section 51.122 also requires that a number of data elements be reported for each source in addition to ozone season NO_X emissions. These data elements describe certain of the source's physical and operational parameters.

Emissions reporting under the NO_X SIP Call as first promulgated was required starting for the emissions reporting year 2002, the year prior to the start of the required emissions reductions. The reports are due to EPA on December 31 of the calendar year following the inventory year. For example, emissions from all sources and types in the 2002 ozone season were required to be reported on December 31, 2003. However, because the Court which heard challenges to the NO_X SIP Call delayed the implementation by 1 year to 2004, no State was required to start reporting until the 2003 inventory year. The EPA promulgated a rule to subject Georgia and Missouri to the NO_X SIP Call with an implementation date of 2007. (*See* 69 FR 21604, April 21, 2004.) We have recently proposed to stay the NO_X SIP Call for Georgia (*see* 70 FR 9897, March 1, 2005). Missouri's emissions reporting begins with 2006. These emissions reporting requirements under the NO_X SIP Call affect the District of Columbia and 18 of the 28 States affected by the proposed CAIR.

As noted above, the other set of pre-existing emissions reporting requirements is codified at subpart A of part 51. Although entitled the Consolidated Emissions Reporting Rule (CERR), this rule left in place the separate § 51.122 for the NO_X SIP Call reporting. The CERR requirements were aimed at obtaining emissions information to support a broader set of purposes under the CAA than were the reporting requirements under the NO_X

SIP Call. The CERR requirements apply to all States.

Like the requirements under the NO_X SIP Call, the CERR requires reporting of all sources at 3-year intervals (2005, 2008, etc.). It requires reporting of certain large sources every year. However, the required reporting date under the CERR is 5 months later than under the NO_X SIP Call reporting requirements. Also, emissions must be reported for the whole year, for a typical day in winter, and a typical day in summer, but not for the 5-month ozone season as is required by the NO_X SIP Call. Finally, the CERR and the NO_X SIP Call differ in what non-emissions data elements must be reported.

3. Summary of the Proposed Emissions Reporting Requirements

On June 10, 2004, EPA published a SNPR (69 FR 32684) to EPA's January 30, 2004 proposal (69 FR 4566). The EPA's main objective with respect to emissions reporting was to add limited new requirements for emissions reports to serve the additional purposes of verifying the CAIR-required emissions reductions. The SNPR also sought to harmonize the CERR and NO_X SIP Call reporting requirements with respect to specific data elements and consolidate them entirely in subpart A, and to reduce and simplify the reporting requirements in several ways. These latter changes were proposed to be applicable to all States, not just those affected by the CAIR emissions reduction requirements. The major changes included in the SNPR are described below.

Amendments were proposed to subpart A, which contains § 51.1 through 51.45 and an appendix, and to § 51.122. We also proposed to add a new § 51.125.

- In § 51.122, the NO_X SIP Call provisions, we proposed to abolish certain requirements entirely, and to replace certain requirements with a cross reference to subpart A so that detailed lists of required data elements appeared only in subpart A. As proposed, § 51.122 would then have specified what pollutants, sources, and time periods the States subject to the NO_X SIP Call must report and when, but would no longer have listed the detailed data elements required for those reports.
- The proposed new § 51.125 would have been functionally parallel to § 51.122, specifying all the pollutants, sources, and time periods the States subject to the proposed CAIR must report and when, referencing subpart A for the detailed data elements required.
- The proposed amended subpart A would have listed the detailed data elements for all three reporting programs (CERR, NO_X SIP Call, and CAIR) as well as provided information on submittal procedures, definitions, and other generally applicable provisions.

Taken together, the pre-existing emissions reporting requirements under the NO_X SIP Call and CERR were already rather comprehensive in terms of the States covered and the information required. Therefore, the practical impact of the proposed changes would have imposed only three new requirements.

First, in Arkansas, Florida, Iowa, Louisiana, Mississippi, and Wisconsin for which we proposed and are finalizing a finding of significant contribution to ozone nonattainment in another State but which were not among the 22 States already subject to the NO_X SIP Call, the required emissions reporting would be expanded to match those of the 22 States. The proposed change would require that they report NO_X emissions during the 5-month ozone season and for a typical summer day, in addition to the existing requirement for reporting emissions for the full year. We proposed that this new requirement begin with the triennial inventory year prior to the CAIR implementation date. This would be the 2008 inventory year, the report for which would be due to EPA by June 1, 2010.

Second, under the existing CERR, yearly reporting is required only for sources whose emissions exceed specified amounts. The SNPR proposed that the 28 States and the District of Columbia subject to the CAIR for reasons of $PM_{2.5}$ must report to EPA each year a set of specified data elements for all sources subject to new controls adopted specifically to meet the CAIR requirements related to $PM_{2.5}$, unless the sources participate in an EPA-administered emissions trading program. We proposed that this new requirement begin with the 2009 inventory year, the report for which will be due to EPA by June 1, 2011. This new requirement would have no effect on States that fully comply with the CAIR by requiring their EGUs to participate in the CAIR model cap and trade programs.

Third, in all States, we proposed to expand the definition of what sources must report in point source format, so that fewer sources would be included in non-point source emissions.[121] We proposed to base the requirement for point source format reporting on whether the source is a major source under 40 CFR part 70 for the pollutants for which reporting is required, *i.e.*, for CO, VOC, NO_X, SO_2, $PM_{2.5}$, PM_{10} and ammonia but without regard to emissions of hazardous air pollutants.

A number of other proposed changes would have reduced reporting requirements on States or provided them with additional options. Two of the proposed changes in this category are of special note in understanding the final requirements of today's rule. (The remainder of these changes were explained in the SNPR at 69 FR 32697.)

- The NO_X SIP Call rule requires the affected States to submit emissions inventory reports for a given ozone season to EPA by December 31 of the following year. The CERR requires similar but not identical reports from all States by the following June 1, five months later. We proposed to move the December 31 reporting requirement to the following June 1, the more generally applicable submission date affecting all 50 States. We asked for comment on whether allowing this 5-month delay is consistent with the air quality goals served by the emissions reporting requirements. However, we also asked for comment on the alternative of moving forward to December 31 all or part of the June 1 reporting for all 50 States. In particular, we solicited comment on requiring that point sources be reported on December 31 and other sources on June 1.
- We also proposed to eliminate a requirement of the NO_X SIP Call for a special all-sources report by affected States for the year 2007, due December 31, 2008.

4. Summary of Comments Received and EPA's Responses

A number of commenters objected to the 45-day comment period as being too short to allow for full understanding of and comment on the emissions reporting changes that EPA had proposed. With respect to this issue, EPA believes that the comment period was sufficient for those proposed changes that would affect the States subject to the emissions reductions

[121] We used the term "non-point source" in the SNPR to refer to a stationary source that is treated for inventory purposes as part of an aggregated source category rather than as an individual facility. In the existing subpart A of part 51, such emissions sources are referred to as "area sources." However, the term "area source" is used in section 112 of the CAA to indicate a non-major source of hazardous air pollutants, which could be a point source. As emissions inventory activities increasingly encompass both NAAQS-related pollutants and hazardous air pollutants, the differing uses of "area source" can cause confusion. Accordingly, EPA proposed to substitute the term "non-point source" for the term "area source" in subpart A, § 51.122, and the new § 51.125 to avoid confusion. We are not finalizing this change in terminology in today's rule.

requirements of the CAIR and that are specifically directed at ensuring the effectiveness of the CAIR, namely: (1) The requirement for six more States to report ozone season emissions, and (2) the requirement for all subject States to report annual emissions from controlled sources every year if those sources are not participating in the emission trading programs. These proposed changes are easy to understand on their face, and also have close precedents in the NO_X SIP Call. Moreover, the States affected by these proposed reporting requirements were identified as being subject to the proposed emissions reduction requirements of the CAIR in the original NPR, and thus they knew to be alert to the contents of the SNPR. We also consider the comment period sufficient with respect to two other specific elements of the proposal, namely (3) the proposal to eliminate the 2007 inventory reporting requirement under the NO_X SIP Call and (4) the proposal to change the reporting date for the NO_X SIP Call from December 31 (12 months after the end of the reported year) to June 1 (17 months after the end of the reported year). These were also readily understood proposals, and the States affected by them were among those initially identified as subject to the CAIR itself. A number of substantive comments were received on these four proposed changes. Therefore, we have concluded that it is appropriate to consider the substantive comments that were received on these four elements of the SNPR, and to take final action on them. The disposition of the remaining elements of the SNPR is discussed further below.

The EPA received one comment from the Mississippi Department of Environmental Quality on the proposed requirement that Mississippi and five other States report ozone season emissions. Mississippi disagreed that they should be included with the other States subject to the CAIR provisions, including the emissions reporting provisions. The EPA has concluded that the analysis performed to support CAIR and discussed earlier in this preamble amply demonstrates that Mississippi should be included in the CAIR and subject to the CAIR emissions reporting requirements.

We did not receive comments specifically on the proposal to require States to report annual emissions every year from sources controlled to comply with the CAIR, if those sources are not participating in the emission trading programs operated by EPA. While we expect the number of such sources to be small if not zero, we continue to believe that tracking their emissions from year to year is appropriate, and we are finalizing this requirement. Since the CERR already contains a requirement for every-year reporting of emissions from point sources above certain emission thresholds, this requirement will have an incremental impact only if States choose to control fairly small point sources or nonpoint or mobile sources as part of their plan for meeting the CAIR requirements.

The EPA received several comments regarding the elimination of the NO_X SIP Call special all-sources 2007 emissions inventory. These comments all favored the elimination of the 2007 emissions inventory, which EPA is promulgating in today's rule. We would like to clarify that the NO_X SIP Call contained no requirement that any State make a retrospective demonstration that actual statewide emissions of NO_X were within any limit. The requirement for the 2007 inventory was for the purpose of program evaluation by EPA. As explained in the SNPR, we believe that in light of the data on 2007 emissions that will be available from the NO_X trading program and the further reductions in NO_X required by the CAIR, the 2007 inventory submissions from the States are not needed for this purpose.

The EPA also proposed to harmonize the report due dates for the NO_X SIP Call, currently 12 months after the end of the reported year, and for the CERR, currently 17 months after the end of the reported year. The EPA proposed to harmonize the dates for both at 17 months, but asked for comments on a 12-month due date. Several comments were received, all favoring harmonizing the report due date at 17 months. While we continue to believe in the efficiency advantage of harmonized submission date requirements, we are not finalizing this change. The EPA has reconsidered this part of the proposed emissions reporting requirements and believes that it may be in the interest of the public to move in the direction of shortening the emissions reporting cycle for all three reporting requirements (CERR, NO_X SIP Call, and CAIR), rather than accepting the longer CERR cycle for all three reporting requirements. In today's final rule, we are retaining the 12-month submission date requirement of the original NO_X SIP Call for the States already subject to it. For the six States that are newly subject to reporting ozone season NO_X emissions and for the new requirement for every-year reporting by sources controlled to meet the CAIR requirements for SO_2 and NO_X annual emissions reductions but not included in the trading programs, the required reporting date for States will be June 1, 17 months after the end of the reported year, as was proposed. We will address reporting deadlines comprehensively in a separate NPR which will propose a unified, but shorter period of time to report to EPA. This separate notice will allow for more public comment on the reporting cycle. The dual approach to reporting due dates retained in today's rule will be combined into unified due dates and will be influenced by comments received in response to our proposal when the separate rulemaking is completed.

Regarding elements of the proposed requirements beyond these four, i.e., the requirements that would have affected States not subjected to the CAIR emissions reduction requirements as well as CAIR States, many commenters said that EPA should not have included changes to national emissions reporting requirements in a proposed rule placing emissions reduction requirements on only certain States. Commenters also questioned whether EPA had given adequate time for comment on the more detailed revisions in required data elements, definitions, etc. Substantively, many commenters supported some or all of the proposed changes, but some commenters objected to some of them.

The EPA has considered these comments. Without conceding EPA's legal authority to include these provisions in the final rule in light of the history of proposal, public hearing, and comment period, EPA has—in an abundance of caution—decided to omit these provisions from today's rule (see section VIII.D.5 Summary of the Emissions Reporting Requirements below for the changes which are being finalized today). We will repropose them, with modifications, in a separate NPR to allow additional opportunity for public comment by all affected States and other parties.

5. Summary of the Emissions Reporting Requirements

As a result of the comments received, EPA has revised the emissions reporting requirements of today's rule by limiting new requirements to the ones where sufficient notice and opportunity for comment was clearly given in the June 10, 2004, SNPR and that either: (1) Are necessary for the monitoring of the implementation of the emissions reduction requirements of the CAIR, or (2) are changes in reporting under the NO_X SIP Call linked to the CAIR. Three specific emissions reporting provisions that change the pre-existing requirements are included in today's rule.

1. Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin and the District of Columbia, which are subject to the CAIR for reasons of ozone, are made subject to emission reporting requirements for NO_X that are very similar to the existing requirements of the NO_X SIP Call, which already affects all but six of these States. For these six States (Arkansas, Florida, Iowa, Louisiana, Mississippi and Wisconsin) a new requirement is that they report NO_X emissions during the 5-month ozone season from all sources every three years, in addition to reporting emissions for the full year and for a summer day as was already required. This new requirement begins with the triennial inventory year 2008. For all the listed States, a new requirement is to report to EPA for 2009 and each year thereafter the ozone-season and summer day NO_X emissions, plus a set of specified other data elements, for all sources subject to new controls adopted specifically to meet the CAIR requirements related to ozone, unless the sources participate in an EPA-administered emissions trading program. These reports will be due June 1 of the second year following the end of the reported year, *i.e.*, 17 months after the end of the reported year. The existing CERR includes several other reporting requirements which in conjunction with this new requirement will meet the needs for monitoring the implementation of required NO_X emissions reductions.

2. Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin and the District of Columbia, which are subject to the CAIR for reasons of $PM_{2.5}$, must report to EPA each year annual NO_X and SO_2 emissions, plus a set of specified other data elements, for all sources subject to new controls adopted specifically to meet the CAIR requirements related to $PM_{2.5}$, unless the sources participate in an EPA-administered emissions trading program. Previously, these states may have been required to report these sources only every third year, depending on their size. The existing CERR includes several other reporting requirements which in conjunction with this new requirement will meet the needs for monitoring the implementation of required NO_X and SO_2 emissions reductions.

3. The EPA has determined that the requirement in the NO_X SIP Call for a special all-sources report by affected States for the year 2007, due December 31, 2008, is no longer needed to administer provisions in the NO_X SIP Call. Accordingly, EPA is eliminating this requirement in today's rule.

The final rule accomplishes these changes by making minimal changes to the existing provisions of 40 CFR part 51. Subpart A, which contains the CERR requirements, is not amended at all. 40 CFR 51.122, the section containing emission inventory reporting requirements for the NO_X SIP Call, is substantively amended only to delete the requirement for the 2007 inventory report.[122] A new section 40 CFR 51.125 is added to contain the two new emission inventory reporting requirements specifically related to the new CAIR requirements for emissions reductions, regarding ozone-season emissions of NO_X and every-year reporting of NO_X and SO_2 emissions from all sources controlled but not participating in the EPA trading programs. The new 40 CFR 51.125 refers to 40 CFR subpart A for the other specific data elements that must be reported.

VIII. Model NO_X and SO_2 Cap and Trade Programs

A. What Is the Overall Structure of the Model NO_X and SO_2 Cap and Trade Programs?

The EPA is finalizing model rules for the CAIR annual NO_X, CAIR ozone-season NO_X, and SO_2 trading programs that States can use to meet the emission reduction requirements in the CAIR. These rules are designed to be referenced by States in State rulemaking. State use of the model cap and trade rules helps to ensure consistency between the State programs, which is necessary for the market aspects of the regional trading program to function properly. It also allows the CAIR Program to build on the successful Acid Rain Program. Consistency in the CAIR requirements from State-to-State benefits the affected sources, as well as EPA, which administers the program on behalf of States.

This section focuses on the structure which maintains the existing NO_X SIP Call rules (in part 96, subparts A through J) while adding parallel rules for the CAIR annual NO_X (in subparts AA through II), CAIR SO_2 (in subparts AAA through III), and the CAIR-ozone-season NO_X (in subparts AAAA through IIII) of the model rules. Commenters generally supported the proposed structure of the model rules, as well as the use of the cap and trade approach, which are maintained in the final rules. Later sections of today's rule discuss specific aspects of the model rules that have been modified or maintained in response to comment.

The EPA designed the model rules to parallel the NO_X SIP Call model trading rules (part 96) and to coordinate with the Acid Rain Program. Mirroring the structure of existing part 96 in the final CAIR NO_X and SO_2 model rules will ease the transition to the CAIR rules as many States and sources are already familiar with the layout of the NO_X SIP Call rule. In addition, because the EPA proposed new CAIR model trading rules—separate from the existing NO_X SIP Call model rule in part 96—States can continue to reference part 96 (subparts A through J) through 2008. The CAIR ozone-season NO_X cap and trade program that the EPA has included in today's final rule is intended for use by CAIR ozone-affected sources as well as those subject to the NO_X SIP Call in 2009 and beyond. Those States that wish to use an EPA-administered, ozone-season cap and trade program to achieve the reductions mandated by the CAIR or the NO_X SIP Call, must use the CAIR ozone-season NO_X model rule (subparts AAAA through IIII) in 2009 and beyond.

The model rules rely on the detailed unit-level emissions monitoring and reporting procedures of part 75 and consistent allowance management practices. (Note that full CAIR-related SIP requirements, *i.e.*, part 51, are discussed in section VII of today's preamble.) Additionally, section IX.B of today's preamble discusses the final revisions to parts 72 through 77 in order to, among other things, facilitate the interaction of the title IV Acid Rain Program's SO_2 cap and trade provisions and those of the CAIR SO_2 trading program.

Road Map of Model Cap and Trade Rules

The following is a brief "road map" to the final CAIR NO_X and SO_2 cap and trade programs. Please refer to the detailed discussions of the CAIR

[122] 40 CFR 51.122 is also amended: (1) to remove a reference to now-obsolete electronic data reporting processes (a "housekeeping" deletion that was specifically included in the proposed rule text with the SNPR), and (2) to make a minor technical correction to properly indicate which of the latitude versus longitude data elements corresponds to the x-coordinate and which to the y-coordinate (a correction that was implicitly proposed in the SNPR in that 51.122 was proposed to refer to 51 subpart A for all its data element descriptions).

programmatic elements throughout today's rule for further information on each aspect.

State Participation

- States have flexibility to achieve emissions reductions however they chose, including developing and implementing their own trading program.
- States may elect to participate in an EPA-managed cap and trade program. To participate, a State must adopt the model cap and trade rules finalized in this section of today's rule with flexibility to modify sections regarding NO_X allocations and whether to include individual unit opt-in provisions.
- States may participate in EPA-managed cap and trade programs for either the annual NO_X, the ozone-season NO_X, the SO_2, or any combination. The State can only choose to participate in the EPA-administered, CAIR cap and trade program(s) that is (are) relevant to their finding(s).
- The annual NO_X model rule is to be used by only those States that are affected by the CAIR $PM_{2.5}$ finding.
- The ozone-season NO_X model rule is designed to be used by those States that are affected by the CAIR ozone finding as well as take the place of the NO_X SIP Call requirements.[123] The CAIR ozone-season NO_X program will be the only ozone-season NO_X program that EPA will administer. Because EPA will no longer run a NO_X SIP Call trading program, States may include their NO_X SIP Call trading sources if they adopt the EPA-administered CAIR ozone-season NO_X program.
- The SO_2 model rule is designed to satisfy the ongoing statutory requirements of the title IV Acid Rain SO_2 cap and trade program—with sequential compliance with title IV and the CAIR—for sources in the CAIR region that are affected by both the Acid Rain Program and the CAIR.

Trading Sources

- States must achieve all of the mandated emission reductions from EGUs to participate in EPA-managed cap and trade programs. States may include other NO_X SIP Call trading sources in the ozone-season CAIR NO_X cap and trade program and still participate in EPA-managed cap and trade programs.
- States may participate in EPA-managed cap and trade programs whether or not they adopt the optional individual opt-in provisions of the model rule. However, if the State chooses to allow individual sources to opt-in, the opt-in requirements must reflect the requirements of the model rule.

Emission Allowances

- The CAIR annual NO_X cap and trade program will rely upon CAIR annual NO_X allowances allocated by the States. The NO_X SIP Call allowances and CAIR ozone-season NO_X allowances cannot be used for compliance with the annual CAIR reduction requirement. (Note that allowances from the Compliance Supplement Pool (CSP) will be CAIR annual NO_X allowances.)
- The CAIR ozone-season NO_X cap and trade program will rely upon CAIR ozone-season NO_X allowances allocated by the States. In addition, pre-2009 NO_X SIP Call allowances can be banked into the program and used by CAIR-affected sources for compliance with the CAIR ozone-season NO_X program. The NO_X SIP Call allowances of vintages 2009 and later can not be used for compliance with any EPA-administered cap and trade programs.
- The CAIR SO_2 cap and trade program will rely upon title IV SO_2 allowances but may also include additional CAIR SO_2 allowances, should a State that allows an individual unit opt-in mechanism provide CAIR SO_2 allowwances to an opt-in source. Pre-2010 title IV SO_2 allowances can be used for compliance with the CAIR.
- Sulfur dioxide reductions are achieved by requiring sources to retire more than one allowance for each ton of SO_2 emissions. The emission value of an SO_2 allowance is independent of the year in which it is used, but is based upon its vintage (*i.e.*, the year in which the allowance is issued). Sulfur dioxide allowances of vintage 2009 and earlier offset one ton of SO_2 emissions. Vintages 2010 through 2014 offset 0.5 tons of emissions. And, vintages 2015 and beyond offset 0.35 tons of emissions.

Allocation of Allowances to Sources

- For SO_2 allowances, sources have already received allowances through title IV.
- NO_X allowances (for both the annual and ozone-season programs) will be allocated based upon the State's chosen allocation methodology. The EPA's model NO_X rules have provided an example allocation, complete with regulatory text, that may be used by State's or replaced by text that implements a States alternative allocation methodology.

Compliance Supplement Pool (CSP)

- Each State will have a share of the CSP that is comprised of 200,000[124] CAIR annual NO_X allowances of vintage year 2009. The State may distribute the CSP allowances based upon the criteria, found in the SIP Approvability section of today's rule, for early reductions and need.

Emission Monitoring and Reporting by Sources

- Sources monitor and report their emissions using part 75. This includes individual sources that opt-in to the program.
- Source information management, emissions data reporting, and allowance trading is done through on-line systems similar to those currently used for the Acid Rain SO_2 and NO_X SIP Call Programs.
- Emission monitoring and reporting for both the CAIR annual and ozone-season NO_X cap and trade programs will use part 75.

Compliance and Penalties

- Compliance for the annual and ozone-season NO_X cap and trade programs, as well as the SO_2 program, will be determined separately.[125]
- For the NO_X and SO_2 cap and trade programs, any source found to have excess emissions must: (1) Surrender allowances sufficient to offset the excess emissions; and, (2) surrender allowances from the next control period equal to three times the excess emissions.

Comments Regarding the Use of a Cap and Trade Approach and the Proposed Structure

Commenters overwhelmingly supported the use of a cap and trade approach and the overall framework of the model rules to achieve the mandated emissions reductions. Some supported the use of cap and trade for achieving regional emissions reductions but noted the need to have additional measures that ensure that emission reductions take place in nonattainment areas. This is in line with the EPA's strategy of reducing transported SO_2 and NO_X through a regionwide cap and trade approach and encouraging States to take complementary measures to address their particular, persistent nonattainment issues. (Note that comments on specific mechanisms

[123] Rhode Island (RI) is the only State currently participating in the NO_X SIP Call cap and trade program that is not affected by today's ozone finding. As is explained in section IX, RI may join the CAIR ozone-season trading program as a means of satisfying its NO_X SIP Call requirements.

[124] The 200,000 total includes the share of the CSP that DE and NJ would receive if the EPA finalizes a parallel rule finding that they are significant contributors for $PM_{2.5}$.

[125] Compliance with the title IV Acid Rain Program will be determined separately from CAIR compliance.

within the cap and trade program are discussed in the topic-specific sections that follow.)

B. What Is the Process for States To Adopt the Model Cap and Trade Programs and How Will It Interact With Existing Programs?

1. Adopting the Model Cap and Trade Programs

States may choose to participate in the EPA-administered cap and trade programs, which are a fully approvable control strategy for achieving all of the emissions reductions required under today's rulemaking in a highly cost-effective manner. States may simply reference the model rules in their State rules and, thereby, comply with the requirements for statewide budget demonstrations detailed in section VII.B of today's preamble. Affected States for both $PM_{2.5}$ and ozone can adopt the annual NO_X and SO_2 cap and trade programs in part 96, subparts AA through II, part 96 subparts AAA through III, and AAAA through IIII. States with ozone-season only CAIR requirements (*i.e.*, Arkansas, Connecticut, Delaware, Massachusetts, and New Jersey) can adopt the ozone-season CAIR NO_X program (subparts AAAA through IIII). Part 96 subparts AA through II and AAA through III can be used by States that are affected for only $PM_{2.5}$ (*i.e.*, Georgia, Minnesota, and Texas). States that elect to achieve the required reductions by regulating other sources or using other approaches will follow alternate State requirements, also described in section VII.B of today's preamble.

As proposed, EPA is requiring States that wish to participate in the EPA-managed cap and trade program to use the model rule to ensure that all participating sources, regardless of which State in the CAIR region they are located, are subject to the same trading and allowance holding requirements. Further, requiring States to use the complete model rule provides for accurate, certain, and consistent quantification of emissions. Because emissions quantification is the basis for applying the emissions authorization provided by each allowance and emissions authorizations (in the form of allowances) are the valuable commodity traded in the market, the emissions quantification requirements of the model rule are necessary to maintain the integrity of the cap and trade approach of the program and therefore, to ensure that the environmental goals of the program are met.

For States Electing To Participate in the EPA-Administered Ozone-Season CAIR NO_X Cap and Trade Program

States that wish to achieve their CAIR ozone-season requirements through an EPA-administered ozone-season NO_X cap and trade program will adopt the CAIR model rule in subparts AAAA through IIII. (Note that the EPA-administered annual NO_X CAIR cap and trade program is independent of ozone-season CAIR NO_X model rule.) Because EPA will no longer administer the trading program for the NO_X SIP Call, States that wish to continue to meet their NO_X SIP Call obligations through an EPA-administered cap and trade program will also adopt the CAIR ozone-season model rule. NO_X SIP Call States will "sun set" their NO_X SIP Call rules for sources that will move into the CAIR NO_X ozone-season program. Part 96, sections A–J (*i.e.*, the NO_X SIP Call trading rule) will continue to be available for the NO_X SIP Call and will not be removed for the CAIR. The CAIR model rules specifically address how NO_X SIP Call allowances carry forward into the CAIR NO_X ozone-season program. (Section IX.A provides additional discussion of interactions between the CAIR and the NO_X SIP Call).

For States Electing To Participate in the EPA-Administered Annual NO_X Cap and Trade Program

States that are $PM_{2.5}$ affected and wish to participate in an EPA-administered annual NO_X cap and trade program will adopt the CAIR model rule in subparts AA through II. States may participate by either adopting the model rule provisions by reference or codifying the model rule in their State regulations.

For States Electing To Participate in the EPA-Administered SO_2 Cap and Trade Program

States may simply adopt new provisions, whether by incorporating by reference the CAIR SO_2 cap and Trade rule (part 96, subparts AAA through III) or codifying the provisions of the CAIR SO_2 cap and trade rules, in order to participate in the EPA-administered SO_2 cap and trade program. The CAIR SO_2 model rule works in conjunction with the Acid Rain Program provisions, which are implemented at the Federal level and will stay in place. Today's action also finalizes some revisions to the Acid Rain Program (*i.e.*, parts 72, 73, 74, 75, and 78). (Section IX.B of today's preamble provides additional discussion of interactions between the CAIR and the Acid Rain Program and changes to the Acid Rain Program).

Comments Regarding the Process for Adopting the Model Rules

Commenters supported EPA's proposed process and emphasized the importance of workable model rules, because States with limited resources are likely to incorporate them by reference or heavily rely on them as the basis for State rules.

2. Flexibility in Adopting Model Cap and Trade Rules

It is important to have consistency on a State-to-State basis with the basic requirements of the cap and trade approach when implementing a multi-State cap and trade program. Such consistency ensures the: Preservation of the integrity of the cap and trade approach so that the required emissions reductions are achieved; smooth and efficient operation of the trading market and infrastructure across the multi-State CAIR region so that compliance and administrative costs are minimized; and equitable treatment of owners and operators of regulated sources. However, EPA believes that some limited differences are possible without jeopardizing the environmental and other goals of the program. Therefore, the final rule allows States to modify the model rule language to best suit their unique circumstances in a few, specific areas.

First, States have the flexibility to include, as full trading partners, all trading sources affected by the NO_X SIP Call in the ozone-season CAIR NO_X cap and trade program. This is an outgrowth of the development of the CAIR ozone-season NO_X program, which will be the only ozone-season NO_X cap and trade program administered by EPA.

In addition, States may develop their own NO_X allocations methodologies, provided allocation information is submitted to EPA in the required timeframe. (Section VIII.D of today's preamble discusses unit-level allocations and the related comments in greater detail. This includes a discussion of the provisions establishing the advance notice States must provide for unit-by-unit allocations).

Lastly, States using the model cap and trade rules may elect to include provisions that allow individual units to "opt-in" to the cap and trade programs. States that wish to include this mechanism must adopt provisions discussed in section VIII.G of today's rulemaking. Adopting the individual unit opt-in provisions, which would allow non-EGUs that meet the opt-in requirements to enter into the EPA-managed cap and trade programs, does not preclude a State from participating

in the EPA-administered cap and trade programs.

C. What Sources Are Affected Under the Model Cap and Trade Rules?

In the January 2004 NPR, EPA proposed a method for developing budgets that assumed reductions only from EGUs. Electric Generating Units were defined as: Fossil fuel-fired, non-cogeneration EGUs serving a generator with a nameplate capacity of greater than 25 MWe; and fossil fuel-fired cogeneration EGUs meeting certain criteria (referred to as the "⅓ potential electric output capacity criteria"). In the SNPR, we proposed model cap and trade rules that applied to the same categories of sources. We are finalizing the nameplate capacity cut-off that we proposed in the NPR for developing budgets and that we proposed in the SNPR for the applicability of the model trading rules. We are also finalizing the "fossil fuel-fired" definition and the ⅓ electric output capacity criteria that were proposed. The actual rule language in the SNPR describing the sources to which the model rules apply is being slightly revised to be clearer in response to some comments that the proposed language was not clear.

1. 25 MW Cut-Off

The EPA is retaining the 25 MW cut-off for EGUs for budget and model rule purposes. The EPA believes it is reasonable to assume no further control of air emissions from smaller EGUs. Available air emissions data indicate that the collective emissions from small EGUs are relatively small and that further regulating their emissions would be burdensome, to both the regulated community and regulators, given the relatively large number of such units. For example, NO_X and SO_2 emissions from EGUs of 25 MW or less in the CAIR region represent approximately one percent and two percent of total NO_X and SO_2 emissions from EGUs, respectively. There are over 4000 EGUs of 25 MW or less in the CAIR region. Consequently, EPA believes that administrative actions to control this large group with small emissions would be inordinate and thus does not believe these small units should be included. This approach of using a 25 MW cut-off for EGUs is consistent with existing SO_2 and NO_X cap and trade programs such as the NO_X SIP Call (where existing and new EGUs at or under this cut-off are, for similar reasons, not required to be included) and the Acid Rain Program (where this cut-off is applied to existing units and to new units combusting clean fuel). Also, EPA's New Source Performance Standards use an applicability threshold of approximately 25 MW under subpart Da.

One commenter suggested a plant-wide cut-off of 250 MW. This commenter suggested that including units between 25 and 250 MW would cause these units to shutdown but failed to provide any analysis to support its claim. Such a cut-off would be inconsistent with other existing SO_2 and NO_X cap and trade programs as noted above. The EPA estimates that approximately ⅓ of the SO_2 reductions, and 30 percent of the NO_X reductions, required under today's rule come from plants between 25 MW and 250 MW. Our modeling shows that some units below 250 MW will put on controls as part of our highly cost-effective set of control actions. The units also have the option to coal-switch, alter dispatch, and/or purchase allowances.

Another commenter suggested that, in lieu of the language proposed in the SNPR, EPA adopt a definition for EGU that, according to the commenter, is the Acid Rain Program's definition of affected utility. The commenter stated that the Acid Rain definition of EGU is "all fossil fuel-fired units with a nameplate capacity greater than 25 MW supplying more than ⅓ of potential electrical output to the grid." However, the commenter misstated the Acid Rain definition and confused the Acid Rain applicability provisions concerning utility units in general with those provisions concerning cogeneration units in particular. The Acid Rain Program covers, with certain exceptions,[126] all existing fossil fuel-fired units greater than 25 MW that produce any electricity for sale; and new fossil fuel-fired units that produce any electricity for sale. The language referenced by the commenter concerning potential electrical output applies, in the Acid Rain Program, only to cogeneration units, not all fossil fuel-fired units. For non-cogeneration units, there is no exemption from Acid Rain Program requirements based on the unit selling a "small" amount of electricity for sale. The provisions in the NPR and the SNPR concerning cogeneration units are discussed below.

2. Definition of Fossil Fuel-Fired

The EPA is finalizing the proposed definition of fossil fuel-fired, *i.e.*, where any amount of fossil fuel is used at any time. This is the same definition that is used in the Acid Rain Program. One commenter suggested that the proposed definition is too broad and that EPA should use in the CAIR Program the same definition that is used in the NO_X SIP Call, *i.e.*, where a unit uses fossil fuel for at least 50 percent of its annual heat input during a specified period. The same commenter also proposed excluding large wood-fired boilers and black liquor recovery furnaces. The commenter's definition would result in units already subject to the Acid Rain Program in a given State being excluded from the CAIR Program and the model cap and trade rules applicable in that State. Such exclusion would make it more difficult to coordinate the Acid Rain Program and the CAIR Program. Consequently, EPA rejects the commenter's more restricted definition of fossil fuel-fired.

The EPA recognizes that new (*i.e.*, post-1990) units that are 25 MW or less and burn other than clean fuels are subject to the Acid Rain Program but not to the CAIR Program. However, there are very few such units, and EPA has decided to exclude any units that are 25 MW or less on other grounds discussed above.

3. Exemption for Cogeneration Units

As proposed, EPA is finalizing an exemption from the model cap and trade programs for cogeneration units, *i.e.*, units having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy and meeting certain operating and efficiency standards (discussed below). The EPA is adopting the proposed definition of cogeneration unit and the proposed criteria for determining which cogeneration units qualify for the exemption from the model cap and trade programs.

The CAIR trading program has different applicability provisions for non-cogeneration units and cogeneration units. If a unit initially qualifies as a cogeneration unit, and for the exemption from the trading program for certain cogeneration units, but subsequently loses its cogeneration-unit status (*e.g.*, due to changes in operation), such unit loses the cogeneration-unit exemption and becomes subject to the applicability criteria for non-cogeneration units, regardless of any future changes in the unit or its operations. If, under the non-cogeneration unit applicability criteria, the unit becomes subject to the trading program, the unit will remain subject to the program in the future. Conversely if a unit initially does not qualify as a cogeneration unit, such unit becomes subject to the applicability criteria for non-cogeneration units, regardless of

[126] For example, certain cogeneration units and new units 25 MW or less that burn only clean fuel are exempt from the Acid Rain Program.

any future changes in the unit. If, under such criteria, the unit is subject to the trading program, the unit will remain subject to the program in the future. This approach to applicability means that units (other than, in some cases, opt-in units) cannot go in and out of the trading program, which, if allowed, would make it difficult for EPA, States, and owners or operators to determine which units should be complying with trading program requirements, and during what years, and would likely result in more non-compliance problems.

a. Efficiency Standard for Cogeneration Units

The EPA proposed operating and efficiency standards (*i.e.*, the useful thermal energy output of the unit must be no less than a certain percent of the total energy output and, in some cases, useful power must be no less than a certain percent of total energy input) in the SNPR that a unit must meet in order to qualify as a cogeneration unit. If the unit qualifies as a cogeneration unit, then it may be eligible for exemption from the CAIR, depending upon whether it meets additional operating criteria, discussed below. As discussed in the NPR, EPA proposed the same operating and efficiency standards for all fossil fuel-fired units (regardless of whether they burn coal, oil, or gas). In addition, not applying the operating and efficiency standards to coal-fired units would be counter productive to EPA's efforts to reduce SO_2 and NO_X emissions under this proposed rule because of the relatively high SO_2 and NO_X emissions from coal-fired units. In particular, without application of the efficiency standards to coal-fired units, highly inefficient coal-fired units, which have particularly high emissions per MWhr generated, could be exempt from the CAIR Program. In addition, if coal-fired units were not subject to the operating standard, the potential would exist for a coal-fired unit to provide only a token amount of useful thermal energy and still qualify for a cogeneration unit exemption from the CAIR Program, despite having relatively high emissions.

One commenter suggested that EPA should not use the efficiency standards for solid fuel-fired cogeneration units, because it may require some coal-fired cogeneration units that were exempt from the Acid Rain Program to purchase CAIR allowances. However, the EPA analysis indicates that most existing solid fuel-fired cogeneration units affected by this rule will meet the proposed standard. See TSD entitled "Cogeneration Unit Efficiency Calculations" in the docket. To the extent any solid fuel-fired cogeneration units cannot meet the efficiency standard and become affected units under the CAIR, EPA believes that, considering their relatively high emissions of SO_2 and NO_X compared to oil and gas-fired units, it is important to require these sources to meet the efficiency standards or be subject to the emission limits under the CAIR Program.

Another commenter suggested that the efficiency standards should not apply to solid fuel-fired cogeneration units because solid fuel-fired unit efficiency is based on HHV (higher heating value) while gas, or oil-fired unit efficiency is based on LHV (lower heating value). The EPA analyzed a range [127] of solid fuel-fired cogeneration units and calculated their efficiencies to see if they would meet the minimum efficiency standard. All of the units selected satisfied the proposed efficiency standard. See TSD entitled "Cogeneration Unit Efficiency Calculations" in the docket. As a result, EPA believes that most solid fuel-fired cogeneration units will meet the proposed efficiency standard. The efficiency standard EPA is adopting is the Public Utility Regulatory Act (PURPA) of thermal efficiency of 42.5 percent. See TSD entitled, "Cogeneration Unit Efficiency Calculations" for further discussion, is based on LHV. If the efficiency of a solid-fuel-fired unit is expressed in terms of HHV, it can easily be converted to LHV for purposes of determining whether it meets the efficiency standard. Therefore, the reason given by the commenter (that solid fuel-fired unit efficiency is expressed in terms of HHV) is not grounds for not applying an efficiency standard to these units. One commenter supported applying the same efficiency standard to solid fuel-fired units as EPA proposed. The EPA is finalizing its proposed cogeneration unit definition, which applies the same operating and efficiency standards to all units regardless of the type of fossil fuel burned.

b. One-third Potential Electric Output Capacity

The EPA is finalizing the 1/3 potential electric output capacity criteria in the NPR and SNPR. Under the proposals, the following cogeneration units are EGUs: Any cogeneration unit serving a generator with a nameplate capacity of greater than 25 MW and supplying more than 1/3 potential electric output capacity and more than 219,000 MW-hrs annually to any utility power distribution system for sale. These criteria are similar to those used in the Acid Rain Program to determine whether a cogeneration unit is a utility unit and the NO_X SIP Call to determine whether a cogeneration unit is an EGU or a non-EGU. The primary difference between the proposed criteria and the 1/3 potential electric criteria for the Acid Rain and NO_X SIP Call Programs is that these programs applied the criteria to the initial operation of the unit and then to 3-year rolling average periods while the proposed CAIR criteria are applied to each individual year starting with the commencement of operation. The EPA believes that using an individual year approach would streamline the application and administration of this exemption. No adverse comments were received on using an individual year approach as opposed to a 3-year rolling average. In addition, the criteria under the Acid Rain Program and the NO_X SIP Call are applied somewhat differently to units commencing construction on or before November 15, 1990 and units commencing construction after November 15, 1990. Several commenters suggested exempting all cogeneration units under the PURPA instead of using the proposed criteria and cite the high efficiency of cogeneration as a reason for a complete exemption. The EPA believes it is important to include in the CAIR Program all units, including cogeneration units, that are substantially in the business of selling electricity. The proposed 1/3 potential electric output criteria described above are intended to do that.

Inclusion of all units substantially in the electricity sales business minimizes the potential for shifting utilization, and emissions, from regulated to unregulated units in that business and thereby freeing up allowances, with the result that total emissions from generation of electricity for sale exceed the CAIR emissions caps. The fact that units in the electricity sales business are generally interconnected through their access to the grid significantly increases the potential for utilization shifting.

One commenter suggested that the 1/3 of potential electric output capacity criteria be applied on an annual basis. The EPA agrees that the criteria should be applied annually. The proposed and final model cap and trade rules adopt that approach.

c. Clarifying "For Sale"

Several commenters requested EPA confirm that, for purposes of applying the 1/3 potential electric output criteria,

[127] The range included solid fuel-fired cogeneration units from 25 MW to 250 MW.

simultaneous purchases and sales of electricity are to be measured on a "net" basis, as is done in the Acid Rain Program. At least one commenter suggested that the net approach also be applied to purchase and sales that are not simultaneous. For purposes of applying the 1/3 potential electric output criteria in the CAIR Program and the model cap and trade rules, EPA confirms that the only electricity that counts as a sale is electricity produced by a unit that actually flows to a utility power distribution system from the unit. Electricity that is produced by the unit and used on-site by the electricity-consuming component of the facility will not count, including cogenerated electricity that is simultaneously purchased by the utility and sold back to such facility under purchase and sale agreements under the PURPA. However, electric purchases and sales that are not simultaneous will not be netted; the 1/3 potential electric output criteria will be applied on a gross basis, except for simultaneous purchase and sales. This is consistent with the approach taken in the Acid Rain Program.

d. Multiple Cogeneration Units

Some commenters suggested aggregating multiple cogeneration units that are connected to a utility distribution system through a single point when applying the 1/3 potential electric output capacity criteria. These commenters suggested that it is not feasible to determine which unit is producing the electricity exported to the outside grid. The EPA proposed to determine whether a unit is affected by the CAIR on an individual-unit basis. This unit-based approach is consistent with both the Acid Rain Program and the NO_X SIP Call. The EPA considers this approach to be feasible based on experience from these existing programs, including for sources with multiple cogeneration units. The EPA is unaware of any instances of cogeneration unit owners being unable to determine how to apply the 1/3 potential electric output capacity criteria where there are multiple cogeneration units at a source.

In a case where there are multiple cogeneration units with only one connection to a utility power distribution system, the electricity supplied to the utility distribution system can be apportioned among the units in order to apply the 1/3 potential electric output capacity criteria. A reasonable basis for such apportionment must be developed based on the particular circumstances. The most accurate way of apportioning the electricity supplied to the utility power distribution system seems to be apportionment based on the amount of electricity produced by each unit during the relevant period of time.

Exemption for Independent Power Production (IPP) Facilities: Some commenters stated that certain IPP facilities are exempt from the Acid Rain Program and that they should also be exempt from the CAIR Program and model-cap and trade rules. Under the Acid Rain Program, an IPP facility that has, as of November 15, 1990, a qualifying power purchase commitment (including a sales price) to sell at least 15 percent of planned net output capacity and has installed net output capacity not exceeding 130 percent of planned net output capacity is exempt. However, if the power purchase commitment changes after November 15, 1990 in a way that allows the cost of compliance with the Acid Rain Program to be shifted to the purchaser, then the IPP facility loses the exemption. For example, expiration or termination of the power purchase commitment or modification so that the price is increased (*e.g.*, changed to a market price) results in loss of the exemption. The purpose of the exemption is to protect IPP facilities subject to contract prices that were set before passage of the CAA Amendments of 1990 (including the Acid Rain Program in title IV) and that did not allow passthrough of the costs of Acid Rain Program compliance. However, EPA maintains that this exemption was aimed at easing the transition of such facilities into the Acid Rain Program and that there is no basis for maintaining this exemption for every subsequent cap and trade program. In addition, this exemption was not used in the NO_X SIP Call.

D. How Are Emission Allowances Allocated to Sources?

It is important to have consistency on a State-by-State basis with the basic requirements of the cap and trade approach when implementing a multi-State cap and trade program. This will ensure that: The integrity of the cap and trade approach is preserved so that the required emissions reductions are achieved; the compliance and administrative costs are minimized; and source owners and operators are equitably treated. However, EPA believes that some limited differences, such as allowance allocation methodologies for NO_X allowances, are possible without jeopardizing the environmental and other goals of the program.

1. Allocation of NO_X and SO_2 Allowances

Each State participating in EPA-administered cap and trade programs must develop a method for allocating (*i.e.*, distributing) an amount of allowances authorizing the emissions tonnage of the State's CAIR EGU budget. For NO_X allowances, each State has the flexibility to allocate its allowances however they choose, so long as certain timing requirements are met.

For SO_2, as noted in the January 2004 proposal, States will have no discretion in their allocation approach since the CAIR SO_2 cap and trade program uses title IV SO_2 allowances, which have been already allocated in perpetuity to individual units by title IV of the CAA.

a. Required Aspects of a State NO_X Allocation Approach

While it is EPA's intent to provide States with as much flexibility as possible in developing allocation approaches, there are some aspects of State allocations that must be consistent for all States. All State allocation systems are required to include specific provisions that establish when States notify EPA and sources of the unit-by-unit allocations. These provisions establish a deadline for each State to submit to EPA its unit-by-unit allocations for processing into the electronic allowance tracking system. Since the Administrator will then expeditiously record the submitted allowance allocations, sources will thereby be notified of, and have access to, allocations with a minimum lead time (about 3 years) before the allowances can be used to meet the NO_X emission limit.

Today's action finalizes the proposal to require States to submit unit-by-unit allocations of allowances for a given year no less than 3 years prior to January 1 of the allowance vintage year, which approach was supported by commenters.[128] Requiring States to submit allocations and thereby provide a minimum lead time before the allowances can be used to meet the NO_X emission limit ensures that an affected source—regardless of the State in the CAIR region in which the unit is located—will have sufficient time to plan for compliance and implement their compliance planning. Allocating allowances less than 3 years in advance of the compliance year may reduce a CAIR unit's ability to plan for and implement compliance and,

[128] If the deadline for States to submit SIPs is September of 2006, then this would result in notification period of less than 3 years for the first year of CAIR.

consequently, increase compliance costs. For example, a shorter lead time would reduce the period for buying or selling allowances and could prevent sources from participating in allowance futures markets, a mechanism for hedging risk and lowering costs.

Further, requiring a uniform, minimum lead-time for submission of allocations allows EPA to perform its allocation-recordation activities in a coordinated and efficient manner in order to complete expeditiously the recordation for the entire CAIR region and thereby promote a fair and competitive allowance market across the region.

These minimum requirements apply to the NO_X allocation approach and are not relevant for the SO_2 cap and trade program, which relies on title IV allowances.

b. Flexibility and Options for a State NO_X Allowance Allocations Approach

Allowance allocation decisions in a cap-and-trade program raise essentially distributional issues, as economic forces are expected to result in economically efficient and environmentally similar outcomes regardless of the manner in which allowances are initially distributed. Consequently, for CAIR NO_X allowances, States are given latitude in developing their allocation approach. NO_X allocation methodology elements for which States will have flexibility include:

A. The cost of the allowance distribution (*e.g.*, free distribution or auction);

B. The frequency of allocations (*e.g.*, permanent or periodically updated);

C. The basis for distributing the allowances (*e.g.*, heat-input or power output); and,

D. The use of allowance set-asides and their size, if used (*e.g.*, new unit set-asides or set-asides for energy efficiency, for development of Integrated Gasification Combined Cycle (IGCC) generation, for renewables, or for small units).

Some commenters have argued against giving States flexibility in determining NO_X allocations, citing concerns about complexity of operating in different markets and about the robustness of the trading system. The EPA maintains that offering such flexibility, as it did in the NO_X SIP Call, does not compromise the effectiveness of the trading program.

A number of commenters have argued against allowing (or requiring) the use of allowance auctions, while others did not believe that EPA should recommend auctions. For today's final action, while there are some clear potential benefits to using auctions for allocating allowances (as noted in the SNPR), EPA believes that the decision regarding utilizing auctions should ultimately be made by the States. Therefore, EPA is not requiring, restricting, or barring State use of auctions for allocating allowances.

A number of commenters supported allowing the use of allowance set-asides for various purposes. In today's final action, EPA is leaving the decision on using set-asides up to the States, so that States may craft their allocation approach to meet their State-specific policy goals.

i. Example Allowance Allocation Methodology

In the SNPR, EPA included an example (offered for informational guidance) of an allocation methodology that includes allowances for new generation and is administratively straightforward. In today's preamble, EPA is including in today's preamble, this "modified output" example allocations approach, as was outlined in the SNPR.

The EPA maintains that the choice of allocation methodology does not impact the achievement of the specific environmental goals of the CAIR Program. This methodology is offered simply as an example, and individual States retain full latitude to make their own choices regarding what type of allocation method to adopt for NO_X allowances and are not bound in any way to adopt EPA's example.

This example method involves input-based allocations for existing fossil units, with updating to take into account new generation on a modified-output basis. It also utilizes a new source set-aside for new units that have not yet established baseline data to be used for updating. Providing allowances for new sources addresses a number of commenter concerns about the negative effect of new units not having access to allowances.

Under the example method, allocations are made from the State's EGU NO_X budget for the first five control periods (2009 through 2013) of the model cap and trade program for existing sources on the basis of historic baseline heat input. Commenters expressed some concern regarding the proposed January 1, 1998 cut-off on-line date for considering units as existing units. The cut-off on-line date was selected so that any unit meeting the cut-off date would have at least 5 years of operating data, *i.e.*, data for 1998 through 2002 (which was the last year for which annual data was available). The EPA is still concerned with ensuring that particular units are not disadvantaged in their allocations by having insufficient operating data on which to base the allocations. The EPA believes that a 5 year window, starting from commencement of operation, gives units adequate time to collect sufficient data to provide a fair assessment of their operations. Annual operating data is now available for 2003. The EPA is finalizing January 1, 2001 as the cut-off on-line date for considering units as existing units since units meeting the cut-off date will have at least 5 years of operating data (*i.e.*, data for 2001 through 2005).

The allowances for 2014 and later will be allocated from the State's EGU NO_X budget annually, 6 years in advance, taking into account output data from new units with established baselines (modified by the heat input conversion factor to yield heat input numbers). As new units enter into service and establish a baseline, they are allocated allowances in proportion to their share of the total calculated heat input (which is existing unit heat input plus new units' modified output). Allowances allocated to existing units slowly decline as their share of total calculated heat input decreases with the entry of new units.

After 5 years of operation, a new unit will have an adequate operating baseline of output data to be incorporated into the calculations for allocations to all affected units. The average of the highest 3 years from these 5 years will be multiplied by the heat-input conversion factor to calculate the heat input value that will be used to determine the new unit's allocation from the pool of allowances for all sources.

Under the EPA example method, existing units as a group will not update their heat input. This will eliminate the potential for a generation subsidy (and efficiency loss) as well as any potential incentive for less efficient existing units to generate more. This methodology will also be easier to implement since it will not require the updating of existing units' baseline data. Retired units will continue to receive allowances indefinitely, thereby creating an incentive to retire less efficient units instead of continuing to operate them in order to maintain the allowances allocations.

Moreover, new units as a group will only update their heat input numbers once—for the initial 5-year baseline period after they start operating. This will eliminate any potential generation subsidy and be easier to implement, since it will not require the collection

and processing of data needed for regular updating.

The EPA believes that allocating to existing units based on a baseline of historic heat input data (rather than output data) is desirable, because accurate protocols currently exist for monitoring this data and reporting it to EPA, and several years of certified data are available for most of the affected sources. The EPA expects that any problems with standardizing and collecting output data, to the extent that they exist, can be resolved in time for their use for new unit calculations. Given that units keep track of electricity output for commercial purposes, this is not likely to be a significant problem.

A number of commenters expressed support for EPA's proposal in the SNPR that the heat input data for existing units be adjusted by multiplying it by different factors based on fuel-type. Contrary to some commenters' claims, determining allocations with fuel factors would not create disincentives for efficiency. With the use of a single baseline for existing units, neither adjusted input, nor input, nor output based allocations would provide additional incentives for energy efficiency. All sources have incentives to reduce emissions (improving efficiency is a way of doing this) as a result of the cap and trade program, not because of the choice of an allocation based on a single historic baseline.

The EPA acknowledges that since allowances have value, different allocations of allowances clearly do impact the distribution of wealth among different generators. However, in general, the economics of power generation dictate that generators selling power will seek to operate (and burn fuel) to meet energy demand in a least-cost manner. The cost of the power generated (reflecting the bid price per megawatt hour) will include the cost of allowances to cover emissions, whether the generator uses allowances that it already owns, or whether it needs to purchase additional allowances. With a liquid market for allowances, allocations for existing sources (whose baseline does not change) are a sunk benefit or sunk cost, not impacting the existing generator's behavior on the margin. Thus, the use of fuel factors in our allocating method would not be expected to result in changes in generators' choices for fuel efficiency.

In its example allocation approach, EPA is including adjustments of heat input by fuel type based on average historic NO_X emissions rates by three fuel types (coal, natural gas, and oil) for the years 1999–2002. As noted in the SNPR, such calculations would lead to adjustment factors of 1.0 for coal, 0.4 for gas and 0.6 for oil. The factors would reflect the inherently different emissions rates of different fossil-fired units (and consequently also reflect the different burdens to control emissions.

However, allocating to new (not existing) sources on the basis of input (and particularly fuel-adjusted heat input) would serve to subsidize less-efficient new generation. For a given amount of generation, more efficient units will have the lower fuel input or heat input. Allocating to new units based on heat input could encourage the building of less efficient units since they would get more allowances than an equivalent efficient, lower heat-input unit. The modified output approach, as described below, will encourage new, clean generation, and will not reward less efficient new coal units or less efficient new gas units.

Under the example method, allowances will be allocated to new units of each fuel-type with an appropriate baseline on a "modified output" basis. The new unit's modified output will be calculated by multiplying its gross output by a heat rate conversion factor of 7,900 btu/kWh for coal units and 6,675 btu/kWh for oil and gas units. The 7,900 btu/kWh value for the conversion factor for new coal units is an average of heat-rates for new pulverized coal plants and new IGCC coal plants (based upon assumptions in EIA's Annual Energy Outlook (AEO) 2004 [129]). The 6,675 btu/kWh value for the conversion factor for new gas units is an average of heat-rates for new combined cycle gas units (also based upon assumptions in EIA's AEO 2004). A single conversion rate for each fuel-type will create consistent and level incentives for efficient generation, rather than favoring new units with higher heat-rates.

For new cogeneration units, their share of the allowances will be calculated by converting the available thermal output (btu) of useable steam from a boiler or useable heat from a heat exchanger to an equivalent heat input by dividing the total thermal output (btu) by a general boiler/heat exchanger efficiency of 80 percent.

New combustion turbine cogeneration units will calculate their share of allowances by first converting the available thermal output of useable steam from a heat recovery steam generator (HRSG) or useable heat from a heat exchanger to an equivalent heat input by dividing the total thermal output (btu) by the general boiler/heat exchanger efficiency of 80 percent. To this they will add the electrical generation from the combustion turbine, converted to an equivalent heat input by multiplying by the conversion factor of 3,413 btu/kWh. This sum will yield the total equivalent heat input for the cogeneration unit.

Steam and heat output, like electrical output, is a useable form of energy that can be utilized to power other processes. Because it would be nearly impossible to adequately define the efficiency in converting steam energy into the final product for all of the various processes, this approach focuses on the efficiency of a cogeneration unit in capturing energy in the form of steam or heat from the fuel input.

Commenters expressed concern about a single conversion factor, arguing for different factors for different fuels and technologies. The EPA recognizes these concerns and agrees that different new fossil-generation units have inherently different heat rates, largely dictated by the technology needed to burn different fuels. A single conversion rate for all units would provide new gas-fired combined cycle units with relatively more allowances, relative to their emissions, than it would for new coal-fired units.

The EPA maintains that providing each new source an equal amount of allowances per MWh of output, given the fuel it is burning, is an equitable approach. Since electricity output is the ultimate product being produced by EGUs, a single conversion factor for each fuel, based on output, ensures that all new sources burning a particular fuel will be treated equally.

Some commenters support allocating allowances to all new generation, not just fossil fuel-fired CAIR units. The EPA notes that including new non-CAIR and non-fossil units in the allowance distribution would raise issues, about which EPA lacks sufficient information for resolution at this time for EPA's example method. It would be necessary to clearly define what types of generating facilities that could participate and what would constitute "new" non-fossil generation.[130] Commenters did not provide any analysis of the impact of possible definitions on generation mix, or electricity markets. Further, in order to include all generation, there would be a need to establish application and data

[129] Energy Information Administration, "Annual Energy Outlook 2004, With Projections to 2025", January 2004. Assumptions for the NEMS model. *http://www.eia.doe.gov/oiaf/archive/aeo04/assumption/tbl38.html.*

[130] Some commenters stated that, if allocations were provided for non-emitting new generation, they also should be provided to all such generation, including nuclear units.

collections procedures and determine appropriate size cut-offs and boundaries of this generation—since in many such instances there is no clear analog to discrete fossil "units." [131] There also are associated issues about developing appropriate measurement and data reporting requirements for such sources. Commenters supporting this approach did not address any of these matters in any detail. However, EPA encourages States that are interested in including such units in their updating allocations to consider potential solutions and include them in their SIPs. Under the example method, new units that have entered service, but have not yet started receiving allowances through the update, will receive allowances each year from a new source set-aside. The new source allowances from the set-aside will be distributed based on their actual emissions from the previous year. Such an allocation approach will generally provide new units sufficient allowances to cover their emissions during the interim period before the units are allocated allowances on the same basis as existing units.

Today's example method includes a new source set-aside equal to 5 percent of the State's emission budget for the years 2009–2013 and 3 percent of the State's emission budget for the subsequent years. In the SNPR, EPA proposed a level 2 percent set-aside for all years.

Commenters noted their concern that the amount of the set-aside in the early years of the program should be higher to reflect the fact that the set-aside will initially need to accommodate all new units entering into service from 1998 through 2010.[132] In order to estimate the need for allocations for new units, EPA looked at the NO_X emissions from units that went online starting in 1999 as projected by the Integrated Planning Model (IPM) runs modeling CAIR for the years 2010 and 2015. These IPM emissions projections indicated over 57,000 tons of NO_X emissions in 2010 and about 74,000 tons of NO_X emission by 2015 from new sources need to be covered under set-asides throughout the CAIR region. The 2010 number represents almost 4 percent of the Phase I NO_X regional cap, while the 2015 number represents about 6 percent of the Phase I regional cap. Consequently, today's example method includes a 5 percent set-aside for the initial period (2009–2013). It should be noted that by 2014, the set-aside would need to cover new sources from the entire period 2004–2013.

The choice of a 3 percent new source set-aside, starting in 2014, reflects concerns that adequate allowances be provided for the 10 years of new units to be covered by the set-aside in 2014 and subsequent years. (The set-aside in 2014, for example, would need to accommodate all units that went on-line between 2004 and 2013).

Individual States using a version of the example method may want to adjust this initial 5 year set-aside amount to a number higher or lower than 5 percent to the extent that they expect to have more or less new generation going on-line during the 2001–2013 period. They may also want to adjust the subsequent set-aside amount to a number higher or lower than 3 percent to the extent that they expect more or less new generation going on-line after 2004. States may also want to set this percentage a little higher than the expected need, since, in the event that the amount of the set-aside exceeds the need for new unit allowances, the State may want to provide that any unused set-aside allowances will be redistributed to existing units in proportion to their existing allocations.

For the example method, EPA is finalizing the approach that new units will begin receiving allowances from the set-aside for the control period immediately following the control period in which the new unit commences commercial operation, based on the unit's emissions for the preceding control period. Thus, a source will be required to hold allowances during its start-up year, but will not receive an allocation for that year.

States will allocate allowances from the set-aside to all new units in any given year as a group. If there are more allowances requested than in the set-aside, allowances will be distributed on a pro-rata basis. Allowance allocations for a given new unit in following years will continue to be based on the prior year's emissions until the new unit establishes a baseline, is treated as an existing unit, and is allocated allowances through the State's updating process. This will enable new units to have a good sense of the amount of allowances they will likely receive—in proportion to their emissions for the previous year. This methodology will not provide allowances to a unit in its first year of operation; however it is a methodology that is straightforward, reasonable to implement, and predictable.

In the SNPR, the example method from the NO_X SIP Call model rule was proposed as an alternate approach.[133] However, the EPA has found this approach to be complicated for both the States and the EPA to implement. Additionally, the NO_X SIP Call approach would introduce a higher level of uncertainty for sources in the allocation process than necessary.

While the EPA is offering an example allocation method with accompanying regulatory language, the EPA reiterates that it is giving States' flexibility in choosing their NO_X allocations method so they may tailor it to their unique circumstances and interests. Several commenters, for instance, have noted their desire for full output-based allocations (in contrast to the hybrid approach in the example above). In the past, EPA had sponsored a work group to assist States wishing to adopt output-based NO_X allocations for the NO_X SIP Call and believes it is a viable approach worth considering. Documents from meetings of this group and the resulting guidance report (found at *http://www.epa.gov/airmarkets/fednox/workgrp.html)* together with additional resources such as the EPA-sponsored report "Output-Based Regulations: A Handbook for Air Regulators" (found at *http://www.epa.gov/cleanenergy/pdf/output_rpt.pdf*) can help States, should they choose to adopt any output-based elements in their allocation plans.

As an another alternative example, States could decide to include elements of auctions into their allowance allocation programs.[134] An example of an approach where CAIR NO_X allowances could be distributed to sources through a combination of an auction and a free allocation is provided below.

During the first year of the trading program, 94 percent of the NO_X allowances could, for example, be allocated to affected units with an auction held for the remaining 1 percent of the NO_X allowances [135]. Each subsequent year, an additional 1 percent of the allowances (for the first 20 years of the program), and then an additional 2.5 percent thereafter, could be auctioned until eventually all the allowances are auctioned. With such a system, for the first 20 years of the

[131] For instance, would the addition of a single new wind turbine at a wind-farm constitute a "new unit"?

[132] As noted earlier in this section, EPA is now considering new units to be those that went online after January 1, 2001 rather than 1998.

[133] With the alternate approach from the NO_X SIP Call. States could distribute a new source set-aside for a control period based on full utilization rates, at the end of the year the actual allowance allocation would be adjusted to account for actual unit utilization/output, and excess allowances would be returned and redistributed, first taking into account new unit requests that were not able to be addressed.

[134] Auctions could provide States with a non-distortionary source of revenue.

[135] 5 percent of the allowances would go to a new source set-aside.

trading programs, the majority of allowances would be distributed for free via the allocation. Allowances allocated for these earlier years are generally more valuable than allowances allocated for later years because of the time value of money. Thus, most emitting units would receive relatively more allowances in the early years of the program, when they are facing the expenses of taking actions to control their emissions. Even though the proportion of allowances allocated to existing sources declines in the later years of the program, these sources receive for free a very significant share of the total value of allowances (because the discounted present value of allowances allocated in the early years of the program is greater than the discounted present value of the allowances auctioned later).

Auctions could be designed by the State to promote an efficient distribution of allowances and a competitive market. Allowances would be offered for sale before or during the year for which such allowances may be used to meet the requirement to hold allowances. States would decide on the frequency and timing of auctions. Each auction would be open to any person, who would submit bids according to auction procedures, a bidding schedule, a bidding means, and by fulfilling requirements for financial guarantees as specified by the State. Winning bids, and required payments, for allowances would be determined in accordance with the State program and ownership of allowances would be recorded in the EPA Allowance Tracking System after the required payment is received.

The auction could be a multiple-round auction. Interested bidders would submit before the auction, one or more initial bids to purchase a specified quantity of NO_X allowances at a reserve price specified by the State, specifying the appropriate account in the Allowance Tracking System in which such allowances would be recorded. Each bid would be guaranteed by a certified check, a funds transfer, or, in a form acceptable to the State, a letter of credit for such quantity multiplied by the reserve price. For each round of the auction, the State would announce current round reserve prices for NO_X and determine whether the sum of the acceptable bids exceeds the quantity of such allowances, available for auction. If the sum of the acceptable bids for NO_X allowances exceeds the quantity of such allowances the State would increase the reserve price for the next round. After the auction, the State would publish the names of winning and losing bidders, their quantities awarded, and the final prices. The State would return payment to unsuccessful bidders and add any unsold allowances to the next relevant auction.

In summary, today's action provides, for States participating in the EPA-administered CAIR NO_X cap and trade program, the flexibility to determine their own methods for allocating NO_X allowances to their sources. Specifically, such States will have flexibility concerning the cost of the allowance distribution, the frequency of allocations, the basis for distributing the allowances, and the use and size of allowance set-asides.

E. What Mechanisms Affect the Trading of Emission Allowances?

1. Banking

a. The CAIR NPR and SNPR Proposal for the Model Rules and Input From Commenters

Banking is the retention of unused allowances from 1 calendar year for use in a later calendar year. Banking allows sources to make reductions beyond required levels and "bank" the unused allowances for use later. Generally speaking, banking has several advantages: It can encourage earlier or greater reductions than are required from sources, stimulate the market and encourage efficiency, and provide flexibility in achieving emissions reductions goals. When sources reduce their SO_2 and NO_X emissions in the early phases, the cap and trade program creates an emissions "glide path" that provides earlier environmental benefits and lower cost of compliance. This "glide path" does allow emissions to exceed the cap and trade program budget—especially in the initial years after the adoption of a more stringent cap. The use of banked allowances from the Acid Rain and NO_X SIP Call Programs in the CAIR NO_X and SO_2 cap and trade programs is discussed below in section VIII.F of this preamble.

The January 30, 2004 CAIR NPR and June 10, 2004 CAIR SNPR proposed that the CAIR NO_X and SO_2 cap and trade programs allow banking and the use of banked allowances without restrictions. Allowing unrestricted banking and the use of banked allowances is consistent with the existing Acid Rain SO_2 cap and trade program. The NO_X SIP Call cap and trade program, however, has some restrictions on the use of banked allowances, a procedure called "flow control," described in detail in the June 10, 2004 CAIR SNPR.

Comments Regarding Unrestricted Banking After the Start of the CAIR NO_X and SO_2 Cap and Trade Programs

Many commenters supported the EPA's proposal to allow unrestricted banking and the use of banked allowances for both SO_2 and NO_X, agreeing that flow control is a complex and confusing procedure with undemonstrated environmental benefit. Further, they agreed that banking with no restrictions on use will encourage early emissions reductions, stimulate the trading market, encourage efficient pollution control, and provide flexibility to affected sources in meeting environmental objectives.

Other commenters objected to the EPA's proposal to allow unrestricted use of banked allowances. All of these commenters supported some use of flow control in the CAIR cap and trade programs, most supporting its use for both SO_2 and NO_X.

Some commenters disagreed with the EPA's assessment that the use of flow control in the Ozone Transport Commission (OTC) cap and trade program was complicated to understand and implement and caused market complexity. One commenter further elaborated that flow control was accepted by industry. Another commenter claimed that the EPA has not analyzed the impact of the flow control mechanism.

Some commenters supportive of flow control stated that flow control was "successful" in the OTC and NO_X SIP Call trading programs and "worked well" and "achieved the desired effect," without supporting those statements.

b. The Final CAIR Model Rules and Banking

The EPA acknowledges that the OTC NO_X cap and trade program has functioned for several years despite the complexity introduced by the flow control procedures. Industry and other allowance traders have adapted to these complex procedures, yet there are ongoing questions from the regulated community about how the procedures actually work. As an example, one commenter, while disagreeing with the EPA's assertion that flow control is overly complex, goes on to describe incorrectly the implementation of flow control. The NO_X SIP Call cap and trade program includes similar procedures but flow control was not triggered in the first 2 years of the program (2003 and 2004), so there is no experience to be drawn from that program.

The EPA maintains that the benefits of utilizing these complex procedures is questionable. The EPA has analyzed the

use of the flow control procedures in a paper released in March 2004, "Progressive Flow Control in the OTC NO_X Budget Program: Issues to Consider at the Close of the 1999 to 2002 Period." The lessons learned from this analysis were as follows:

(1) Flow control can create market pricing complexity and uncertainty. The need for implementation of flow control for a particular control period is not known more than a few months in advance, and the value of banked allowances varies from year to year, depending on whether flow control has been triggered for the particular year. Therefore, when deciding how much to control, a source has some increased uncertainty about the value of any excess allowances it generates.

(2) Flow control can have a bigger impact on small entities than on large entities. Large firms with multiple allowance accounts can shift banked allowances among those accounts to minimize the number of banked allowances surrendered at a discounted rate.

(3) Flow control does not directly affect short-term emissions, so it may not serve the environmental goals for which it was created.

Incorporating these lessons learned, the EPA is finalizing the CAIR NO_X and SO_2 cap and trade programs with no flow control mechanism.

2. Interpollutant Trading Mechanisms

a. The CAIR NPR Proposal for the Model Rules and Input From Commenters

Mechanisms for interpollutant trading allow reduced emissions of one pollutant to be exchanged for increased emissions of another pollutant where both pollutants cause the same environmental problem (*e.g.*, are precursors of a third pollutant). Interpollutant trading mechanisms are typically based upon each precursor's contribution to a particular environmental problem and are often controversial and scientifically difficult to design because of the complexities of environmental chemistry. Determination of conversion factors (*i.e.*, transfer ratios that relate the impact of one pollutant to the impact of another pollutant) can be dependent upon location, the presence of other pollutants that are necessary for chemical reactions, the time of emissions, and other considerations.

The January 30, 2004 CAIR NPR did not propose a specific interpollutant trading mechanism but rather took comment on interpollutant trading in general as well as the following specific issues:

(1) What would be the exchange rate (*i.e.*, the transfer ratio) for the two pollutants,

(2) How can the transfer ratio best achieve the goals of $PM_{2.5}$ and ozone reductions in downwind States and,

(3) How would the interpollutant trading accommodate the different geographic regions of the $PM_{2.5}$ and ozone programs?

Comments Regarding the Potential Interpollutant Trading

The EPA received several comments on interpollutant trading with the most commenters generally opposed to including provisions to allow for the interchangability of SO_2 and NO_X allowances.

Several commenters pointed out that the CAIR ozone attainment benefits result from the NO_X emissions reductions, and contend that the EPA has not shown that SO_2 emissions impact ozone. Therefore, the commmenters conclude that it would be inappropriate for SO_2 allowances to be traded and used for compliance with the NO_X cap. Some commenters supported the consideration or use of interpollutant trading if it was one-directional, *i.e.*, NO_X allowances could be used for compliance with the SO_2 allowance holding requirements, but not vice versa. This could result in fewer NO_X emissions and more SO_2 emissions.

Some commenters supported the consideration or use of interpollutant trading and emphasized the scientific difficulty in developing accurate transfer ratios. Of these commenters, some added that interpollutant trading would be appropriate if the EPA conducted a thorough analysis of the potential impacts that interpollutant trading would have on: nonattainment areas' ability to come into attainment; the allowance markets and prices; and the integrity of the NO_X caps in light of the potentially large SO_2 allowance bank that might be carried forward into the CAIR trading programs.

A few commenters noted that the EPA is directed by the CAA to study interpollutant trading and has approved SIPs that allow the trading of ozone precursors under specific circumstances.

b. Interpollutant Trading and the Final CAIR Model Rules

Interpollutant trading can provide some additional compliance flexibility, and potentially lower compliance costs, if appropriately applied to multiple pollutants that have reasonably well known impacts on the same environmental problem. The EPA acknowledges that it has the authority to create interpollutant trading programs and has done so, in other regulatory contexts, in the past. However, for several reasons, the EPA determined that direct interpollutant trading is not appropriate in the CAIR.

The final CAIR includes separate annual SO_2 and annual NO_X model rules to address $PM_{2.5}$ precursor emissions, and an ozone-season NO_X model rule to address summertime ozone precursor emissions. The EPA believes it is not appropriate for the CAIR model rules to allow annual SO_2 or NO_X allowances to be used for compliance with ozone-season NO_X allowance holding requirements because this has the potential to adversely impact the ozone-season emissions reductions and ozone air quality improvements from CAIR. This is significant because the EPA, as required by the CAA, has promulgated a national air quality standard for 8-hour ozone based on a determination that the standard is necessary to protect public health. Section 110(a)2(D) requires States to prohibit emissions in amounts that will significantly contribute to nonattainment in, or interfere with maintenance by, any other State with respect to any air quality standard, including ozone. In this rule, EPA has designed the annual (SO_2 and NO_X) and ozone-season (NO_X) emission caps to achieve the emissions reductions necessary to address each State's significant contribution to downwind $PM_{2.5}$ and ozone nonattainment, respectively, and to prevent interference with maintenance. If sources were permitted to use annual SO_2 or annual NO_X allowances for compliance with ozone-season NO_X allowance holding requirements (*i.e.*, the ozone-season NO_X cap), then there would be no assurance that upwind States' ozone-season NO_X reduction obligations would be met, and CAIR's projected ozone improvements in downwind nonattainment areas could be significantly reduced. As a result, should interpollutant trading be permitted between the annual and ozone-season programs, the EPA could not demonstrate that the use of a CAIR ozone-season cap and trade program would result in the emissions reductions necessary to satisfy upwind States' obligations under section 110(a)2(D)to reduce NO_X for ozone purposes.

The EPA believes it is also inappropriate to use annual NO_X allowances for compliance with the annual SO_2 allowance holding requirements, and vice versa. The EPA agrees with commenters that emphasize

that the chemical interactions for $PM_{2.5}$ precursors are scientifically complex and must be accurately reflected in any transfer ratio in order to maintain the integrity of the market. For example, EPA analysis has shown (see January 30, 2004 NPR) that $PM_{2.5}$ precursors, such as NO_X and SO_2, may have non-linear interactions in the formation of $PM_{2.5}$. Any uniform, interpollutant transfer ratio would have to be an average and would introduce significant variability concerning the impact of interpollutant trading on emissions and significant uncertainty concerning the achievement of the CAIR Program's emission reduction goals. The EPA did not receive a response to the request in the January 30, 2004 NPR for information on an appropriate value for a potential transfer ratio. While the EPA did receive one comment that recommended the use of a trading ratio of two NO_X allowances for one SO_2 allowance, no comments presented supporting analysis that could be used to develop transfer ratios.

While many commenters supportive of allowing interpollutant trading in the CAIR claimed that it would provide additional compliance flexibility to sources, the EPA contends that use of the newly created CAIR trading markets is sufficiently flexible. Sources may develop integrated, multi-pollutant control strategies and use the separate allowance markets to mitigate differences in control costs (within the boundaries of emissions caps). In other words, a source can choose the level to which they can cost effectively control one pollutant and, if necessary, buy or sell emission allowances of the other pollutant to compensate for any expensive or inexpensive control cost. When markets are used to provide for trading of multiple pollutants, sources benefit from the additional compliance flexibility while the caps assure the achievement of the overarching environmental goals.

In the June 10, 2004 SNPR, the EPA solicited comment on how an interpollutant trading mechanism might accommodate the slightly different geographic regions found to be significant contributors for $PM_{2.5}$ and ozone under the CAIR. No commenters provided supporting analysis or input on this issue.

In summary, the EPA received comments that generally opposed including a specific interpollutant trading mechanism. No commenters provided analysis to demonstrate the benefit of including a specific interpollutant trading mechanism nor was there analysis provided in response to the EPA's solicitation in the June 10, 2004 SNPR for input on: Transfer ratios, addressing two different environmental issues, and having slightly different annual NO_X and ozone season NO_X control regions. Furthermore, because the NO_X and SO_2 markets provide very flexible mechanisms for trading of the two pollutants, the EPA does not believe there is a compelling need to go further at this time. Therefore, EPA is not finalizing provisions in the CAIR model rules that specifically address interpollutant trades.

F. Are There Incentives for Early Reductions?

When sources reduce their SO_2 and NO_X emissions prior to the first phase of a multi-phase cap and trade program, it creates the emissions "glide slope" of a cap and trade approach that provides early environmental benefit and lowers the cost of compliance. Early reduction credits (ERCs) can provide an incentive for sources to install and/or operate controls before the implementation dates. Allowing emission allowances from existing programs to be used for compliance in the new program is another mechanism to encourage early reductions prior to the start of a cap and trade program. This section discusses the potential use of mechanisms to provide incentives for early reductions in the CAIR.

1. Incentives for Early SO_2 Reductions

a. The CAIR NPR and SNPR Proposal for the Model Rules and Input From Commenters

The January 30, 2004 CAIR NPR and June 10, 2004 CAIR SNPR acknowledge the benefit of early reductions and provide for the use of title IV SO_2 allowances of vintage years 2009 and earlier to be used for compliance in the CAIR at a one-to-one ratio. In other words, title IV allowances can be banked into the CAIR Program. This provides incentive for title IV sources to reduce their emissions in years 2009 and earlier because these allowances may be used for CAIR compliance without being discounted by the retirement ratios applied to the 2010 and later SO_2 allowances. No other mechanism, such as SO_2 ERCs were proposed by the EPA.

Comments Regarding the Incentives for Early SO_2 Reductions

The EPA received comments on incentives for early SO_2 reductions with the majority supporting the EPA proposal to encourage early emission reductions by allowing the CAIR sources to use 2009 and earlier vintage title IV SO_2 allowances for CAIR compliance. Some supporters noted concerns in meeting the CAIR's stringent Phase I SO_2 requirements as another reason to allow the banking of undiscounted, title IV allowances into the CAIR.

Some commenters expressed concern that achieving the SO_2 caps would be delayed if a large number of SO_2 allowances were being banked into the CAIR. Based upon experience with implementing the Acid Rain Program, the EPA acknowledged in the SNPR that crediting early reductions does create a glide slope—where emissions are reduced below the baseline before the implementation date and "glide" down to the ultimate cap level sometime after the program begins. This gradual reduction in emissions is a key component to cap and trade programs having lower cost of compliance than command-and-control approaches. One commenter proposed that the EPA needs to assess the likelihood that allowing the banking of undiscounted title IV allowances would delay the attainment of the Phase I SO_2 cap until Phase II. Because the EPA included this mechanism (*i.e.*, the use of 2009 and earlier vintage SO_2 allowances for compliance in the CAIR) in the policy case modeled as part of this rulemaking, EPA analysis includes the benefits and costs that would result from the level of SO_2 reductions that would take place with banking of undiscounted title IV allowances.

One commenter advocated the use of SO_2 ERCs. It was not clear whether these would be awarded in addition to banking title IV allowances into the CAIR or the ERC mechanism would take the place of banking SO_2 allowances into the CAIR.

b. SO_2 Early Reduction Incentives in the Final CAIR Model Rules

The CAIR SO_2 model rule allows CAIR sources to use title IV SO_2 allowances of vintage 2009 and earlier for compliance with the CAIR at a one-to-one ratio. This approach was part of the CAIR policy case assumptions used in the rulemaking modeling and the EPA has shown that the SO_2 cap and trade program, with this early incentive mechanism, will achieve the level of SO_2 reductions needed to meet the CAIR goals. These reductions take place on a glide slope that includes early emissions reductions as well as some use of the SO_2 allowance bank as sources gradually reduce emissions toward the cap levels.

The EPA did not include SO_2 ERCs because the Acid Rain Program cap and trade program, which affects a large segment of the CAIR source universe, makes it impossible to determine whether sources are reducing their SO_2

emissions below levels required by existing (*i.e.*, the Acid Rain Program) programs. Furthermore, given that most sources with substantial emissions receive SO_2 emission allowances under the Acid Rain Program, a significant number of SO_2 allowances are expected to be banked into the CAIR. These banked allowances would be available to CAIR sources in the early years of the program and make ERCs largely unnecessary.

2. Incentives for Early NO_X Reductions

a. The CAIR NPR and SNPR Proposal for the Model Rules and Input From Commenters

In the June 10, 2004 SNPR, the EPA proposed to provide incentives for early NO_X reductions by allowing the use of NO_X SIP Call allowances of vintage 2009 and earlier to be used for compliance in the CAIR. Further, the EPA did not propose, but solicited comment on the potential use of NO_X ERCs to provide an additional incentive for sources to reduce NO_X emissions prior to CAIR implementation. In addition to the general solicitation for comment on NO_X ERCs, the EPA solicited input on the following specific approaches that could be utilized: (1) The EPA could maintain the NO_X SIP Call requirements and allow sources to use ERCs only for compliance with the annual limitation, to ensure that ozone-season NO_X limitations are met. Under this scenario, the additional States subject to the CAIR that have been found to significantly contribute to ozone nonattainment may also have to be included in the ozone season cap; (2) the EPA could limit the period of time during which ERCs could be created and banked; (3) the EPA could cap the amount of ERCs that can be created; and (4) the EPA could apply a discount rate to ERCs.

Comments Regarding the Incentives for Early NO_X Reductions

The EPA did not receive comment on the proposed use of NO_X SIP Call allowances of vintage years 2009 and earlier for compliance in the CAIR. In fact, several commenters characterized the CAIR proposal as not including any incentives for early NO_X emissions reductions.

The EPA received several comments on the potential use of NO_X ERCs with the majority in favor of some sort of ERC mechanism. Several commenters advocated the use of ERCs to mitigate concerns that they would not be able to meet the stringent Phase I CAIR reduction requirements. One commenter wanted early reductions to facilitate the ozone attainment in 2010 but believed 2010 attainment could only be helped if there were some restrictions on the number of ERCs that could be created.

Some ERC supporters wanted credit for wintertime emissions reductions only, while a few believed that credit should be given for reductions at any time of year. One commenter advocated providing ERCs for wintertime reductions only as part of a broader proposal to create a bifurcated NO_X trading system (*i.e.*, separate wintertime and summertime allowances and trading markets).

Many of the commenters supporting the use of ERCs advocated that they be distributed from a pool of allowances similar to the CSP used in the NO_X SIP Call. (The NO_X SIP Call CSP was a fixed pool of NO_X allowances that were distributed on a first come-first serve, prorated, or need basis, depending upon the State). Commenters noted that the CSP approach has already been part of a litigated rulemaking and provides the added benefit of limiting the total number of allowances that can be distributed for early reductions. Other commenters proposed that should the final approach use a pool of allowances, this pool should not remove allowances from the existing State NO_X budget. Another commenter suggested that allowances from a CSP could be distributed based upon a NO_X emission rate, such as 0.25 lbs/mmBtu. Allowances could be distributed to any source emitting below the target emission rate.

Several commenters were concerned that too many NO_X ERCs (as well as NO_X SIP Call allowances) could be introduced into the CAIR and the ability of the NO_X cap and trade program to meet the annual and ozone-season reduction goals could be compromised. Some commenters suggested that crediting early reductions at a discount (*e.g.*, 2 tons of NO_X reductions earn 1 ERC) could mitigate this concern. Other commenters noted that a CSP-style mechanism also provides safeguards against an overabundance of ERCs. Another commmenter noted that restrictions on the use of ERCs similar to the progressive flow control (PFC) mechanism used in the NO_X SIP Call—PFC restricts the use of banked NO_X allowances for compliance in years where the NO_X bank is greater than 10 percent of the allocations—could help to ease concerns of flooding the market with NO_X ERCs.

One commenter believed that the EPA's projection that the potential pool of NO_X ERCs could be as large as 3.7 million tons (presented in the June 10, 2004 SNPR) is unrealistically high. The commenter contended that technical limitations of Selective Catalytic Reduction (SCR) operation would not permit facilities to simply run all of their SCRs year-round. More specifically, the commenter believes the lower operating loads, typically of the wintertime dispatch, would not meet the minimum conditions necessary for SCR operation (*i.e.*, at lower capacity the stack gas temperatures will not support the use of the catalyst). Fewer wintertime opportunities to operate the SCRs is believed by the commenter to result in a smaller projected ERC estimate. This was an estimate used for discussion purposes and was not directly used in the development of the CSP.

A few commenters advocated providing credits to any source that reduced emission rates below those used to determine the CAIR State budgets. One commenter suggested that the rates be based on those rates used to determine the NO_X SIP Call caps.

A few commenters proposed that the EPA should develop a strategy for crediting NO_X reductions from sources that have implemented control measures in response to State-level regulations that are more stringent than the NO_X SIP Call. Another commenter advocated only providing ERCs in States subject to both the NO_X SIP Call and the CAIR.

Some commenters did not support the use of NO_X ERCs in any form. These commenters believe that the use of ERCs would delay attainment of the CAIR emission caps.

b. NO_X Early Reduction Incentives in the Final CAIR Model Rules

The CAIR ozone-season NO_X cap and trade rule will allow the proposed use of NO_X SIP Call allowances of vintage years 2008 and earlier for compliance in the CAIR. This mechanism would provide incentive for sources in NO_X SIP Call States to reduce their ozone-season NO_X emissions and bank additional allowances into the CAIR. Because today's final ozone-season cap and trade rule includes a mandatory ozone-season NO_X cap in 2009 (this modification is discussed in section IV), the provisions to allow the banking of NO_X SIP Call allowances into the CAIR are adjusted to reflect this implementation date.

The CAIR annual NO_X cap and trade rule will provide additional incentives for early annual NO_X reductions by creating a CSP for CAIR States from which they can distribute allowances for early, surplus NO_X emissions reductions in the years 2007 and 2008. The earning of CAIR CSP allowances for

NO_X emission reductions does not begin until 2007 because this is the first year after the State SIP submittal deadlines. The CAIR CSP will provide a total of 200,000 [136] CAIR annual NO_X allowances of vintage 2009 in addition to the annual CAIR NO_X budgets.

The CAIR's CSP is patterned after the NO_X SIP Call's CSP, which is part of an established and extensively litigated rulemaking. Similarities include: Limiting the total number of allowances that can be distributed; limiting the years in which CSP allowances can be earned; populating the CSP with allowances vintaged the first compliance year; and using distribution criteria of early reductions and need.

The EPA will apportion the CSP to the States based upon their share of the final, regionwide NO_X CAIR reductions. Similar to the NO_X SIP Call, States may distribute these CAIR NO_X allowances to sources based upon either: (1) A demonstration by the source to the State of NO_X emissions reductions in surplus of any existing NO_X emission control requirements; or (2) a demonstration to the State that the facility has a "need" that would affect electricity grid reliability. Sources that wish to receive CAIR CSP allowances based upon a demonstration of surplus emissions reductions will be awarded one CAIR annual NO_X allowance for every ton of NO_X emissions reductions. (Should a State receive more requests for allowances than their share of the CAIR CSP, the State would pro-rate the allowance distribution.) Determination of surplus emissions must use emissions data measured using part 75 monitoring.

The EPA elected to include the CSP in response to several comments noting the benefit of early NO_X reductions and some commenters concerns in complying with the stringent Phase I CAIR NO_X cap. While EPA analysis has shown that sources had sufficient time to install NO_X emission controls, the EPA does believe that it would be appropriate to provide some mechanism to alleviate the concerns of some sources which may have unique issues with complying with the 2009 implementation deadline. In addition to mitigating some of the uncertainty regarding the EPA projections of resources to comply with CAIR, the CAIR CSP also effectively provides incentives for early, surplus NO_X reductions.

The EPA agrees with the comments that advocate allowing sources to earn CAIR annual NO_X allowances only for those reductions that are in surplus of the sources' existing NO_X reduction requirements. By allowing sources in NO_X SIP Call and non-NO_X SIP Call States to demonstrate that their year-round early reductions are truly "surplus" and, therefore, deserving of CSP allowances, the EPA is responding to comments that the EPA should allow sources in non-NO_X SIP Call States to receive credit for early reductions. Some commenters advocated crediting sources in the ozone-season NO_X cap and trade program that emitted below the emission rate used to determine the ozone-season budget. The EPA did not accept this recommendation because a source that is allowed to bank NO_X SIP Call allowances into the CAIR ozone-season NO_X program and receive early reduction credit from CAIR's CSP would be essentially "double-counting" that emission reduction.

The EPA did not restrict the use of the NO_X allowances awarded from the CSP because several aspects of the CSP already address concerns that too many total credits would be distributed and that they would flood the markets. First, the CSP is a finite pool of NO_X allowances. Second, by requiring sources to reduce one ton of NO_X emissions for every NO_X allowance awarded from the CSP ensures that significant reductions are made prior to the CAIR implementation date.

G. Are There Individual Unit "Opt-In" Provisions?

In the SNPR, EPA described a potential approach for allowing certain units to voluntarily participate in, or "opt-in," to the CAIR. Originally, EPA proposed to have no opt-in provision but included language in the SNPR on what a potential opt-in provision may look like. This "potential" opt-in provision would have allowed non-EGU boilers and turbines that exhaust to a stack or duct and monitor and report in accordance with part 75 to opt into the CAIR. The opt-in unit would have been required to opt-in for both SO_2 and NO_X. The allocation method for opt-ins assumed a percentage SO_2 reduction from a baseline and for NO_X, allocations were equal to a baseline heat input multiplied by a specified NO_X emissions rate, the same NO_X emissions rate EGUs were subject to in the assumed EGU budgets. Allocations were updated annually and after opting in units would have had to stay in the CAIR for a minimum of 5 years. The EPA received many comments in favor of and very few comments against including an opt-in provision in the final rule. As a result, EPA is including an opt-in provision in this final rule that is based on the approach described in the SNPR but includes several modifications and additions in response to comments as described below. In general, EPA believes there is value to including an opt-in provision but believes that sources that opt-in should be responsible for a certain level of reduction below its baseline because of the additional flexibility provided to that source by opting into a regional trading program and because of the possibility that participation in the CAIR may reduce or eliminate future potential required reductions. Therefore, the following opt-in approach has as its goals to provide more flexibility to the units opting in as well as to potentially provide more cost-effective reductions for the affected EGUs but also to ensure a certain level of reduction from the units opting into the program.

1. Applicability

Some commenters suggested that the opt-in provision not be limited to boilers and turbines but should be open to any unit. The EPA strongly believes that any unit participating in an emissions trading program be subject to accurate and reliable monitoring and reporting requirements. This is the purpose of part 75. The EPA has developed criteria for boilers and turbines to satisfy the requirements of part 75 but has not developed criteria for all non-boilers and turbines and, therefore, cannot be confident their emissions can be monitored with the high degree of accuracy and reliability required by a cap-and-trade program. Continuous Emissions Monitoring Systems or "CEMS" are typically what is required by EPA to participate in a cap-and-trade program.

In response to comments received suggesting that non-boilers and turbines be allowed to opt-in, EPA is expanding applicability of the opt-in provision to include, in addition to boilers and turbines, other fossil fuel-fired combustion devices that vent all emissions through a stack and meet monitoring, recordkeeping, and recording requirements of part 75.

2. Allowing Single Pollutant

Some commenters suggested that sources should be allowed to opt-in for only one pollutant instead of requiring the source to opt-in for both SO_2 and NO_X as EPA proposed. These commenters argued that some sources may only emit significant amounts of one of the two regulated pollutants and that it would not make sense to require reductions in both pollutants from such

[136] The 200,000 ton pool includes the 1,503 tons that would be DE and NJ's share. Section V of today's action describes in detail the State-by-State apportionment of the total CSP.

a source. The EPA agrees with this comment and will allow units to opt-in for one pollutant, *i.e.*, NO_X, SO_2, or both. Another commenter suggested that EPA allow non-EGUs subject to the NO_X SIP Call to opt into the CAIR for NO_X only without requiring any reductions in SO_2. This commenter argued that these non-EGUs could simply turn on their SCRs during the non-ozone season and easily achieve significant NO_X reductions. The EPA agrees that the relatively small number of non-EGUs subject to the NO_X SIP Call that have SCRs could achieve significant NO_X reductions by operating their SCRs during the non-ozone season. As stated above, EPA is allowing sources to opt-in for one pollutant and thus non-EGUs subject to the NO_X SIP call may opt-in for NO_X only.

3. Allocation Method for Opt-Ins

In the SNPR, EPA proposed allocating allowances to opt-in units on a yearly basis. The amount of allowances allocated would be calculated by multiplying an emission rate by the lesser of a baseline heat input or the actual heat input monitored at the unit in the prior year.

The baseline heat input would be calculated by using the most recent 3 years of quality-assured part 75 monitoring data. When less than 3 years of quality-assured part 75 monitoring data is available, the heat input would be based on quality-assured part 75 monitoring data from the year before the unit opted in.

For SO_2, EPA proposed that the emission rate used to calculate allocations would be the lesser of, the most stringent State or Federal SO_2 emission rate that applied in the preceding year or the emission rate representing 50 percent of the unit's baseline SO_2 emission rate (in lbs/mmBtu) for the years 2010 through 2014 and 35 percent of the unit's baseline SO_2 emission rate (in lbs/mmBtu) for 2015 and beyond. For NO_X, EPA proposed that the emission rate would be the lower of the unit's baseline emission rate, the most stringent State or Federal NO_X emission limitation that applies to the opt-in unit at any time during the calender year prior to opting into the CAIR Program, or 0.15 lb/mmBtu for the years 2010 through 2014 and 0.11 lbs/mmBtu for the years 2015 and beyond.

In today's final rule, EPA is making a number of changes to its proposed methodology for calculating allocations for opt-in units.

With regards to baseline heat input, EPA is requiring that sources may only use part 75 monitored data for years in which they have maintained at least a 90 percent monitor availability. The EPA is making this change because part 75 contains missing data provisions that require substitution of data when monitors are unavailable. When units have low monitor availability, units are required to report more conservative (*e.g.*, higher) heat input values. This is to provide an incentive to maintain high monitor availability (since under a cap and trade program sources would be required to turn in more allowances if they reported higher emissions). When setting baselines, sources have the opposite incentive, reporting a higher heat input would result in a higher baseline and thus a greater allocation.

With regards to the SO_2 emission rate used to calculate allocations, EPA is requiring that the emission rate used to calculate allocations would be the lesser of, the most stringent State or Federal SO_2 emission rate that applies to the unit in the year that the unit is being allocated for, or the emission rate representing 70 percent of the unit's baseline SO_2 emission rate (in lbs/mmBtu). The EPA is changing the percentage emission reduction upon which allocations are based because some commenters suggested that instead of using percentage emission reduction requirements that are the same as the requirements for EGUs as a basis for allocating to opt-ins, EPA should require emissions reductions based on similar marginal cost of control. The EPA agrees with the basic concept that emissions reductions for opt-ins should be based on similar marginal costs. One commenter submitted results from a study of industrial boiler NO_X and SO_2 control costs that indicated the use of similar marginal cost of control would result in approximately a 30 percent reduction in NO_X and SO_2 by 2010. While the commenter provided limited data to allow EPA to evaluate the commenter's estimates, EPA is using this percentage reduction requirement for the opt-in provision. The same commenter stated that it may be possible to achieve more than a 30 percent reduction in SO_2 and NO_X by 2015 by employing future unspecified technology advances. Because these future technology advances are not specified nor demonstrated, EPA is not requiring more than a 30 percent reduction in SO_2 and NO_X in 2015 and beyond for opt-ins. The EPA is changing the requirement to use the lowest required emission rate for the year preceding the year in which allowances are being allocated to the lowest emission rate for the year in which allowances are being allocated. The EPA is making this change because EPA believes that such data should be available and that this more accurately reflects the intent of the rule to ensure that the source is not being allocated a greater number of allowances than the emissions a source would be allowed to emit under the regulations it is subject to in the year the allocations are being made. The EPA is finalizing parallel provisions with respect to NO_X.

4. Alternative Opt-In Approach

Some commenters suggested that EPA include an alternative approach to opting into the CAIR. This alternative would allow units to opt-in as early as 2009 for NO_X and 2010 for SO_2 and receive allocations at their current emission levels in return for a commitment to make deeper reductions by 2015 than would be required under the general opt-in provision described above. Therefore, for the years 2010 through 2014, the unit would be allocated allowances based on the same heat input used under the general opt-in provision (*e.g.*, the lesser of the baseline heat input or the heat input for the year preceding the year in which allocations are being made) multiplied by an emission rate. This emission rate would be the lower of the emission rate for the year or years before the unit opted in or the most stringent State or Federal emission rate required in the year that the unit opts in. For SO_2 for the years 2015 and beyond, the unit would be allocated allowances based on the same heat input multiplied by an emission rate. This emission rate would be the lower of a 90 percent reduction from the baseline emission rate or the most stringent State or Federal emission rate required in the baseline year. For NO_X, the same methodology would be used, except that the emission rate used for the years 2015 and beyond would be the lower of 0.15 lbs/mmBtu or the most stringent State or Federal emission rate required in the baseline year. The EPA believes the environmental benefit of achieving deeper emissions reductions in the future (2015) from sources that may otherwise not make such deep emissions reductions is worth including in this final rule.

5. Opting Out

In the SNPR, EPA proposed that opt-in units be required to remain in the program a minimum of 5 years after which time they could voluntarily withdraw from the CAIR. Some commenters expressed concern over this proposed approach, arguing that because EGUs affected by the CAIR are not allowed to voluntarily withdraw from the CAIR that opt-in sources should not be allowed to voluntarily

withdraw either. The EPA recognizes that opt-in sources such as industrial boilers and turbines tend to be more sensitive to changing market forces than EGUs. As a result, EPA believes it is appropriate to allow opt-in sources who voluntarily participate in an emissions reductions program to be able to end their participation or ("opt-out") after a specified period of time. As proposed, EPA believes a period of 5 years is appropriate and is finalizing a rule to allow opt-in sources to opt-out after participating in the CAIR for 5 years. This option to opt-out after 5 years does not apply to sources that opt-in under the alternative approach. Sources that opt-in under the alternative approach may not opt-out at any time.

6. Regulatory Relief for Opt-In Units

The CAIR does not offer relief from other regulatory requirements, existing or future, for units that opt-in to the CAIR cap and trade program. Any revision of requirements for other, non-CAIR programs would be done under rulemakings specific to those programs.

As discussed above, EPA is including two different approaches for opt-in units to follow, a general and an alternative approach. The EPA is including both approaches in this final rule in response to comments supportive of including an alternative means and to provide greater flexibility for sources to participate in the CAIR trading program. Opt-in sources may select which approach is more appropriate for their particular situation. An opt-in source may not switch from one approach to the other once in the program. States have the flexibility to choose to include both of these approaches, one of these approaches, or none of them in their SIPs. EPA is not requiring States to include an individual unit opt-in provision because the participation of individual opt-in units is not required to meet the goals of the CAIR. However, States cannot choose to have an individual unit opt-in approach different than what EPA has finalized in this rule and still participate in the inter-State trading program administered by EPA.

H. What Are the Source-Level Emissions Monitoring and Reporting Requirements?

In the NPR, the EPA proposed that sources subject to the CAIR monitor and report NO_X and SO_2 mass emissions in accordance with 40 CFR part 75.

The model trading rules incorporate part 75 monitoring and are being finalized as proposed. The majority of CAIR sources are measuring and reporting SO_2 mass emissions year round under the Acid Rain Program, which requires part 75 monitoring. Most CAIR sources are also reporting NO_X mass emissions year round under the NO_X SIP Call. The CAIR-affected Acid Rain sources that are located in States that are not affected by the NO_X SIP Call currently measure and report NO_X emission rates year round, but do not currently report NO_X mass emissions. These sources will need to modify only their reporting practices in order to comply with the proposed CAIR monitoring and reporting requirements.

Because so many sources are already using part 75 monitoring, there were very few comments on the source-level monitoring requirements in this rulemaking. The comments the EPA received related to sources not currently monitoring under part 75. Commenters suggested that alternative forms of monitoring (*e.g.*, part 60 monitoring) would be appropriate for these sources. The EPA disagrees. Consistent, complete and accurate measurement of emissions ensures that each allowance actually represents one ton of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions from another source. Similarly, such measurement of emissions ensures that each single allowance (or group of SO_2 allowances, depending upon the SO_2 allowance vintage) represents one ton of emissions, regardless of the source for which it is measured and reported. This establishes the integrity of each allowance, which instills confidence in the underlying market mechanisms that are central to providing sources with flexibility in achieving compliance. Part 75 has flexibility relating to the type of fuel and emission levels as well as procedures for petitioning for alternatives. The EPA believes this provides the requested flexibility.

Should a State(s) elect to use the example allocation approach, the EPA would modify the part 75 monitoring and reporting requirements to collect information used in determining the allowance allocations for Combined Heat and Power (CHP) units. More specifically, provisions for the monitoring and reporting of the BTU content of the steam output would be added to the existing requirements. The information on electricity output currently reported under part 75 would not need to be revised to allow States to implement the example allowance allocation approach.

In the SNPR, the EPA proposed continuous measurement of SO_2 and NO_X emissions by all existing affected sources by January 1, 2008 using part 75 certified monitoring methodologies. New sources have separate deadlines based upon the date of commencement of operation, consistent with the Acid Rain Program. These deadlines are finalized as proposed.

I. What Is Different Between CAIR's Annual and Seasonal NO_X Model Cap and Trade Rules?

Today's action finalizes not only the proposed CAIR annual NO_X program and annual SO_2 program, but also a CAIR ozone-season NO_X program. Because the CAIR ozone-season NO_X program is the only ozone-season NO_X cap and trade program that the EPA will administer, NO_X SIP Call States wishing to meet their NO_X SIP Call obligations through an EPA-administered regional NO_X program will also use the CAIR ozone-season rule. The EPA believes that States and affected sources will benefit from having a single, consistent regional NO_X cap and trade program. This section of today's action highlights any key differences between the CAIR ozone-season NO_X model rule and the NO_X SIP Call model rule, as well as the CAIR annual and ozone-season NO_X model rules.

Differences Between the CAIR Ozone-Season NO_X Model Rule and the NO_X SIP Call Model Rule

While the CAIR ozone-season NO_X model rule closely mirrors the NO_X SIP Call rule (as does the other CAIR rules), the EPA has incorporated into the CAIR model rules its experience with implementing trading programs (including seasonal NO_X programs). These modifications include the following.

A. Unrestricted banking: The CAIR ozone-season NO_X model rule will not include any restrictions on the banking of NO_X SIP Call allowances (vintages 2008 and earlier) or CAIR ozone-season NO_X allowances. The NO_X SIP Call rules include "progressive flow control" provisions that reduce the value of banked allowances in years where the bank is above a certain percentage of the cap. (See section VIII.E.1 of today's rule for a detailed discussion).

B. Facility level compliance: The CAIR ozone-season NO_X model rule will allow sources to comply with the allowance holding requirements at the facility level. The NO_X SIP Call rules required unit-by-unit level compliance with certain types of allowance accounts providing some flexibility for sources with multiple affected units. (See the June 2004 SNPR, section IV for a detailed discussion).

The EPA believes that these changes improve the programs and that both CAIR and NO_X SIP Call affected sources

will benefit from complying with a single, regionwide cap and trade program.

Differences Between the CAIR Ozone-Season and Annual NO_X Model Rules

The CAIR ozone-season and annual NO_X model rules are designed to be identical with the exception of (1) provisions that relate to compliance period and (2) the mechanism for providing incentives for early NO_X reductions. For compliance related provisions, the EPA attempted to maintain as much consistency as possible between the CAIR annual and ozone-season NO_X model rules. For example, reporting schedules remain synchronized (*i.e.*, quarterly reporting) for both of the CAIR NO_X model rules. For the annual and ozone-season NO_X model rules, the EPA did define 12 month and 5 month compliance periods, respectively.

Incentives for early NO_X reductions differ between the CAIR annual and ozone-season programs. For the annual NO_X program, early reductions may be rewarded by States through a CSP. (See section VIII.F.2 of today's action for a detailed discussion.) The CAIR ozone-season NO_X model rule provides incentive for early emissions reductions by allowing the banking of pre-2009 NO_X SIP Call allowances into the CAIR ozone-season program.

J. Are There Additional Changes to Proposed Model Cap and Trade Rules Reflected in the Regulatory Language?

The proposed and final rules are modeled after, and are largely the same as, the NO_X SIP Call model trading rule. Today's final rule includes some relatively minor changes to the model rules' regulatory text that improve the implementability of the rules or clarify aspects of the rules identified by the EPA or commenters. (Note that sections VIII.B through VIII.H of today's action highlight the more significant modifications included in the final model rules).

One example of a relatively minor change is the inclusion of language in the SO_2 model rule that implements the retirement ratio (2.00) used for allowances allocated for 2010 to 2014 and the retirement ratio (2.86) used for allowances allocated for 2015 and later, that clarifies the compliance deduction process and that provides for rounding-up of fractional tons to whole tons of excess emissions. More specifically, the definition of "CAIR SO_2 allowance" states that an allowance allocated for 2010 to 2014 authorizes emissions of 0.50 tons of SO_2 and that an allowance allocated for 2015 or later authorizes emissions of 0.35 tons of SO_2—which corresponds with the 2.86 retirement ratio.

Other, less significant modifications were also included in the regulatory text of the final model rules. These include:

C. Units and sources are identified separately for NO_X and SO_2 programs (*e.g.*, CAIR NO_X units, CAIR Nox ozone season units, and CAIR SO_2 units) since States can participate in one, two, or three trading programs;

D. The definition of "nameplate capacity" is clarified;

E. The language on closing of general accounts is clarified; and,

F. Process of recordation of CAIR SO_2 allowance allocations and transfers on rolling 30-year periods is added to make it consistent with Acid Rain regulations.

Another example of where today's final model trading rules incorporate relatively minor changes from the proposed model trading rules involves the provisions in the standard requirements concerning liability under the trading programs. The proposed CAIR model NO_X and SO_2 trading rules include, under the standard requirements in § 96.106(f)(1) and (2) and § 96.206(f)(1) and (2), provisions stating that any person who knowingly violates the CAIR NO_X or SO_2 trading programs or knowingly makes a false material statement under the trading programs will be subject to enforcement action under applicable State or Federal law. Similar provisions are included in § 96.6(f)(1) and (2) of the final NO_X SIP Call model trading rule. The final CAIR model NO_X and SO_2 trading rules exclude these provisions for the following reasons. First, the proposed rule provisions are unnecessary because, even in their absence, applicable State or Federal law authorizes enforcement actions and penalties in the case of knowing violations or knowing submission of false statements. Moreover, these proposed rule provisions are incomplete. They do not purport to cover, and have no impact on, liability for violations that are not knowingly committed or false submissions that are not knowingly made. Applicable State and Federal law already authorizes enforcement actions and penalties, under appropriate circumstances, for non-knowing violations or false submissions. Because the proposed rule provisions are unnecessary and incomplete, the final CAIR model NO_X and SO_2 trading rules do not include these provisions. However, the EPA emphasizes that, on their face, the provisions that were proposed, but eliminated in the final rules, in no way limit liability, or the ability of the State or the EPA to take enforcement action, to only knowing violations or knowing false submissions.

IX. Interactions With Other Clean Air Act Requirements

A. How Does This Rule Interact With the NO_X SIP Call?

A majority of States affected by the CAIR are also affected by the NO_X SIP Call. This section addresses the interactions between the two programs.

The EPA proposed that States achieving all of the annual NO_X reductions required by the CAIR from only EGUs would not need to continue to impose seasonal NO_X limitations on EGUs from which they required reductions for purposes of complying with the NO_X SIP Call. Also, EPA proposed that States would have the option of retaining such seasonal NO_X limitations. The EPA also proposed to keep the NO_X SIP Call in place for non-EGUs currently subject to the NO_X SIP Call and to continue working with States to run the NO_X SIP Call Budget Trading Program for all sources that would remain in the program. In response to commenters, EPA is making several modifications to its proposed approach.

States Affected by the CAIR for Ozone and $PM_{2.5}$ Will Be Subject to a Seasonal and an Annual NO_X Limitation

A number of commenters recommended leaving the current NO_X SIP Call ozone season NO_X limitation in place as a way to ensure that ozone season NO_X reductions from EGUs required by the NO_X SIP Call would continue to be achieved. Some commenters argued this would also help non-EGUs currently subject to the NO_X SIP Call by allowing them to continue trading with EGUs in a seasonal NO_X program. Many of the same commenters suggested a dual-season or bifurcated CAIR trading program as a mechanism for maintaining an ozone season NO_X limitation for EGUs under the CAIR. In response to these commenters, EPA is requiring that States subject to the CAIR for $PM_{2.5}$ be subject to an annual limitation and that States subject to the CAIR for ozone be subject to an ozone season limitation. This means that States subject to the CAIR for both $PM_{2.5}$ and ozone are subject to both an annual and an ozone season NO_X limitation. The annual and ozone season NO_X limitations are described in section IV. States subject to the CAIR for ozone only are only subject to an ozone season NO_X limitation. To implement these NO_X limitations, EPA will establish and operate two NO_X trading programs, *i.e.*,

a CAIR annual NO_X trading program and a CAIR ozone season NO_X trading program. The CAIR ozone season NO_X trading program will replace the current NO_X SIP Call as discussed in more detail later in this section.

What Will Happen to Non-EGUs Currently in the NO_X SIP Call?

A number of commenters were concerned that the cost of compliance for non-EGUs in the NO_X SIP Call would increase if they were not allowed to continue to trade with EGUs. In response to these commenters, EPA is modifying its proposed approach. The EPA is allowing States affected by the NO_X SIP Call that wish to use EPA's model trading rule to include non-EGUs currently covered by the NO_X SIP Call in the CAIR ozone season NO_X trading program. This will ensure that non-EGUs in the NO_X SIP Call will continue to be able to trade with EGUs as they currently do under the NO_X SIP Call. This will not require States to get additional reductions from non-EGUs. Budgets for these units would remain the same as they are currently under the NO_X SIP Call. States will, however, be required to modify their existing NO_X SIP Call regulations to reflect the replacement of the NO_X SIP Call with the CAIR ozone season NO_X trading program. The EPA will continue to operate the NO_X SIP Call trading program until implementation of the CAIR begins in 2009. The EPA will no longer operate the NO_X SIP Call trading program after the 2008 ozone season and the CAIR ozone season NO_X trading program will replace the NO_X SIP Call trading program. If States affected by the NO_X SIP Call do not wish to use EPA's CAIR ozone season NO_X trading program to achieve reductions from non-EGU boilers and turbines required by the NO_X SIP Call, they would be required to submit a SIP Revision deleting the requirements related to non-EGU participation in the NO_X SIP Call Budget Trading Program and replacing them with new requirements that achieve the same level of reduction.

Compliance With the NO_X SIP Call for States That Are Subject to Both the CAIR Ozone Season NO_X Reduction Requirements and the NO_X SIP Call

If the only changes a State makes with respect to its NO_X SIP Call regulations are: (1) To bring non-EGUs that are currently participating in the NO_X SIP Call Budget Trading Program into the CAIR ozone season program using the same non-EGU budget and applicability requirements that are in their existing NO_X SIP Call Budget Trading Program; and (2) to achieve all of the emissions reductions required under the CAIR from EGUs by participating in the CAIR ozone season NO_X trading program, EPA will find that the State continues to meet the requirements of the NO_X SIP Call.

If the only changes a State makes with respect to its NO_X SIP Call regulations are not those described above, see section VII for a discussion of how the State would satisfy its NO_X SIP Call obligations.

States in the NO_X SIP Call But Not Affected by the CAIR (Rhode Island)

Rhode Island is the only State in the NO_X SIP Call that is not affected by the CAIR. To continue meeting its NO_X SIP Call obligations in 2009 and beyond, Rhode Island will have two choices. It may either modify its NO_X SIP Call trading rule to conform to the new CAIR ozone season NO_X trading rule if it wishes to allow its sources to continue to participate in an interstate NO_X trading program run by EPA or, it will need to develop an alternative method for obtaining the required NO_X SIP Call reductions. In either case, Rhode Island must continue to meet the budget requirements of the existing NO_X SIP Call.

Use of Banked SIP Call Allowances in the CAIR Program

As explained earlier in today's final rule, banked allowances from the NO_X SIP Call may be used in the CAIR ozone season NO_X trading program.

Other Comments and EPA's Responses

One commenter wrote that because attainment demonstrations for early action compacts were made based on having EGUs and non-EGUs together in the NO_X SIP Call, EPA could not allow EGUs to leave the NO_X SIP Call and still have valid early action compacts (EACs). As discussed above, EPA is allowing States to keep EGUs and non-EGUs in the NO_X SIP Call together in one ozone season program (CAIR ozone season trading program). The NO_X reductions required by the CAIR ozone season trading program are slightly more stringent than the reductions required by the NO_X SIP Call. As a result, the attainment demonstrations for EACs would remain valid under the CAIR. Having said that, the EAC program will have ended (April 2008) before the CAIR rule is implemented. Thus, the compacts will no longer be applicable when the CAIR takes effect.

Another commenter proposed to have non-EGUs under the NO_X SIP Call subject to an annual NO_X cap similar to EGUs under the CAIR so that non-EGUs could continue to trade with EGUs. By adopting a CAIR ozone season trading program that includes non-EGUs covered by the NO_X SIP Call, non-EGUs will be able to continue to trade with EGUs.

B. How Does This Rule Interact With the Acid Rain Program?

As EPA developed this regulatory action, much consideration was given to interactions between the existing title IV Acid Rain Program and today's action designed to achieve significant reductions in SO_2 emissions beyond title IV. Requiring sources to reduce emissions beyond what title IV mandates has both environmental and economic implications for the existing title IV SO_2 cap and trade program. In the absence of an approach for taking account of the title IV program, a new program (*i.e.*, the CAIR) that imposes a significantly tighter cap on SO_2 emissions for a region encompassing most of the sources and most of the SO_2 emissions covered by title IV would likely result in a significant excess in the supply of title IV allowances, a collapse of the price of title IV allowances, disruption of operation of the title IV allowance market and the title IV SO_2 cap and trade system, and the potential for increased SO_2 emissions. The potential for increased emissions would exist in the entire country for the years before the CAIR implementation deadline and would continue after implementation for States not covered by the CAIR. These negative impacts, particularly those on the operation of the title IV cap and trade system, would undermine the efficacy of the title IV program and could erode confidence in cap and trade programs in general.

Title IV has successfully reduced emissions of SO_2 using the cap and trade approach, eliminating millions of tons of SO_2 from the environment and encouraging billions of dollars of investments by companies in pollution controls to enable the sale of allowances reflecting excess emissions reductions and in allowance purchases for compliance. In view of these already achieved reductions and existing investments under title IV, the likelihood of disruption of the allowance market and the title IV cap and trade system, and the potential for SO_2 emission increases, it is necessary to consider ways to preserve the environmental benefits achieved under title IV and maintain the integrity of the market for title IV allowances and the title IV cap and trade system. The EPA maintains that it is appropriate to provide States the opportunity to achieve the SO_2 emission reductions

required under today's action by building on, and avoiding undermining, this existing, successful program.

The EPA has developed, in the model SO_2 cap and trade rule, an approach to build on and coordinate with the title IV SO_2 program to ensure that the required reductions under today's action are achieved while preserving the efficacy of the title IV program. The EPA's approach provides States the opportunity to impose more stringent control requirements for EGUs' SO_2 emissions than under title IV through an EPA-administered cap and trade program that requires the use of title IV allowances for compliance at a ratio of 2 allowances per ton of emissions for allowances allocated for 2010 through 2014 and 2.86 allowances per ton of emissions for allowances allocated for 2015 or thereafter. (The program also allows the use of banked title IV allowances allocated for years before 2010 to be used at a ratio of 1 allowance per ton of emissions.) Title IV allowances continue to be freely transferable among sources covered by the Acid Rain Program and sources covered by the model SO_2 cap and trade program under CAIR. However, each title IV allowance used to comply with a source's allowance-holding requirement in the CAIR model SO_2 cap and trade program is removed from the source's allowance tracking system account and cannot be used again for compliance, either in the CAIR model SO_2 cap and trade program or the Acid Rain Program.

In addition, as discussed above, if a State wants to achieve the SO_2 emissions reductions required by today's action through more stringent EGU emission limitations only but without using the model cap and trade program, then EPA is requiring that the State include in its SIP a mechanism for retiring the excess title IV allowances that will result from imposition of these more stringent EGU requirements. In this case, the State must retire an amount of title IV allowances equal to the total amount of title IV allowances allocated to the units in the State minus the amount of title IV allowances equivalent to the tonnage cap set by the State on SO_2 emissions by EGUs, and the State can choose what retirement mechanism to use.

Further, as discussed above, if a State wants to meet the SO_2 emissions reductions requirement in today's action through reductions by both EGUs and non-EGUs, then EPA is also requiring the State's SIP to include a mechanism for retiring excess title IV allowances. In that case, the amount of title IV allowances that must be retired equals the total amount of title IV allowances allocated to the units in the State minus the amount of title IV allowances equivalent to the tonnage cap set by the State on EGU SO_2 emissions, and the State can choose what retirement mechanism to use.

Finally, as discussed above, if the State wants to achieve the SO_2 emissions reductions requirement in today's action through reductions by non-EGUs only, then EPA is not imposing any requirement to retire title IV allowances.

1. Legal Authority for Using Title IV Allowances in CAIR Model SO_2 Cap and Trade Program

The EPA maintains that it has the authority to approve and administer, if requested by a State in the SIP submitted in response to today's action, the new CAIR model SO_2 cap and trade program meeting the SO_2 emission reduction requirement in today's action that requires use of title IV allowances to comply with the more stringent allowance-holding requirement of the new program and retirement under the CAIR SO_2 cap and trade program and the Acid Rain Program of title IV allowances used for such compliance. Some commenters claim that EPA's establishment of such a cap and trade program using title IV allowances that sources must hold generally at a ratio of greater than one allowance per ton of SO_2 emissions is contrary to title IV. Most of these commenters prefer the approach of allowing States to use a new EPA-administered cap and trade program to meet lawful emission reduction requirements under title I and of allowing (but not requiring) sources to use title IV allowances in the new program. However, these commenters argue that title IV prohibits requiring sources to use title IV allowances in such a program, whether at the same tonnage authorization (*i.e.*, one allowance per ton of emissions) established in title IV or at a different tonnage authorization. Other commenters state that title IV does not bar EPA from establishing a new cap and trade program that requires the use of title IV allowances.

The EPA maintains that it has the authority under section 110(a)(2)(D) and title IV to establish a new cap and trade program requiring the use of title IV allowances at a different tonnage authorization than under the Acid Rain Program and the retirement of such allowances for purposes of both programs. First, as discussed in section V above, EPA has the authority under section 110(a)(2)(D) to establish a new SO_2 cap and trade program, administered by EPA if requested in a State's SIP, to prohibit emissions that contribute significantly to nonattainment, or interfere with maintenance, of the $PM_{2.5}$ NAAQS. Further, EPA notes that under section 402(3), a title IV allowance is:

> An authorization, allocated to an affected unit by the Administrator under this title [IV], to emit, during or after a specified calendar year, one ton of sulfur dioxide. 42 U.S.C. 7651(a)(3).

However, section 403(f) states that:

> An allowance allocated under this title is a limited authorization to emit sulfur dioxide in accordance with the provision of this title [IV]. Such allowance does not constitute a property right. Nothing in this title [IV] or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or source, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. 42 U.S.C. 7651b(f).

The EPA interprets the reference in section 403(f) to the authority of the "United States" to terminate or limit the authorization otherwise provided by a title IV allowance to mean that EPA (acting in accordance with its authority under other provisions of the CAA), as well as Congress, has such authority.[137]

[137] The EPA's interpretation is based on the language of section 403(f) and the legislative history of the provision. The language in CAA section 403(f) contrasts with language that was in section 503(f) of the House bill—but was excluded from the final version of the CAA Amendments of 1990—referring to the authority of the "United States" to terminate or limit such authorization "by Act of Congress" and stating that "[a]llowances under this title may not be extinguished by the Administrator." U.S. Senate Committee on Environment and Public Works, *A Legislative History of The Clean Air Act Amendments of 1990* (*Legis. Hist. of CAAA*), S. Prt. 38, 103d Cong., 1st Sess., Vol. II at 2224 (Nov. 1993). Further, unlike CAA section 403(f), the House bill did not state that an allowance did not constitute a property right. Section 403(f) of the Senate bill that was considered, along with the House bill, in conference committee had language different than both CAA section 403(f) and the House bill and stated that "allowances may be limited, revoked or otherwise modified in accordance with the provisions of this title or other authority of the Administrator" and that an allowance "does not constitute a property right." *Legis. Hist. of CAAA*, Vol. III at 4598. While the scope of the reference to the "United States" in CAA section 403(f) is not clear, EPA maintains that the term is clearly broad enough to include the Administrator. Moreover, even if the term were considered ambiguous with regard to the Administrator, EPA believes that interpreting the term to include the Administrator is reasonable. Specifically, EPA maintains that, by eliminating the explicit House bill language that required Congressional action and including the general reference to the "United States" and the "not a property right" language, CAA section 403(f)

Continued

Therefore, EPA maintains that it has the authority to establish a new cap and trade program in accordance with section 110(a)(2)(D) that requires: the holding of title IV allowances under a more limited authorization (*i.e.*, 2 or 2.86 allowances per ton of emissions) by sources in States participating in the new program; and the termination of the authorization through retirement under the new program and the Acid Rain Program of those title IV allowances used to meet the allowance-holding requirement of the new program.

Commenters' Arguments Based on Title IV

The commenters claiming that EPA is barred by title IV from requiring use of title IV allowances at a reduced tonnage authorization in a new cap and trade program rely on the above-noted provision in section 402(3) stating that an allowance is an authorization to emit one ton of SO_2. However, this provision does not bar EPA from requiring either: use of title IV allowances in a new cap and trade program under a different title of the CAA at a reduced tonnage authorization; or retirement in this new program and the Acid Rain Program of allowances used in this manner.

At the outset, it should be noted that the CAIR model SO_2 cap and trade program does not change the tonnage authorization of individual title IV allowances for purposes of the Acid Rain Program until such an allowance is used to meet the allowance-holding requirement of the CAIR SO_2 program. The authorization provided by each title IV allowance for a source to emit one ton of SO_2 emissions, as well as the requirement that each source hold title IV allowances covering annual SO_2 emissions, continue to be in effect in the Acid Rain Program whether or not the source is also covered by the CAIR SO_2 program. In fact, the Acid Rain Program regulations continue to reflect both this tonnage authorization and this allowance-holding requirement.[138] See final revisions to 40 CFR § 73.35 adopted in today's action. Moreover, the CAIR model SO_2 cap and trade rule coordinates the determinations—made by EPA for sources subject to both title IV and the CAIR—of compliance with the title IV and CAIR allowance-holding requirements so that such determinations are made in a multi-step, end-of-year process of comparing allowances held and emissions. First, EPA determines whether the source holds sufficient title IV allowances to comply with the one-allowance-per-ton-of-emissions requirement in the Acid Rain Program as provided in § 73.35; and subsequently EPA determines whether the source holds the additional title IV allowances that, when added to those held for Acid Rain Program compliance, are sufficient to meet the CAIR allowance-holding requirement. Violations of the Acid Rain allowance-holding requirement will result in imposition of the penalty for excess emissions (*i.e.*, the one-allowance offset plus $2,000 (inflation-adjusted) per ton of excess emissions) under CAA section 411 and §§ 73.35(d) and 77.4. *See* final § 96.254(b)(1) adopted in today's action. Thus, the Acid Rain allowance-holding requirement continues as a separate requirement and reflects the one-allowance-per-ton-of-emissions authorization under section 402(3).[139]

In contrast with the one-allowance-per-ton-of-emissions requirement under the Acid Rain Program, the CAIR SO_2 cap and trade program requires each source generally to hold 2 or 2.86 Acid Rain allowances for each ton of SO_2 emissions. Contrary to the commenters' claim, this CAIR allowance-holding requirement is not barred by the definition of the term "allowance" in section 402(3). While section 402(3) defines the term "allowance" as an authorization to emit one ton of SO_2, this provision expressly applies the definition to the term "[a]s used in this title [IV]" and therefore does not apply to the treatment of title IV allowances in a different program under a different title of the CAA. Moreover, as noted above, section 403(f) allows EPA to limit (or terminate) the authorization to emit that an allowance otherwise provides under section 402(3). Consequently, the allowance definition in section 402(3) does not bar the treatment of a title IV allowance as authorizing less than one ton of SO_2 emissions under the CAIR SO_2 cap and trade program established under title I.[140]

Once a title IV allowance is used to meet the more stringent allowance-holding requirement in the CAIR SO_2 program, that allowance is deducted from the source's allowance tracking system account and cannot be used again, either in the CAIR SO_2 program or the Acid Rain Program. As noted above, EPA has the authority under section 403(f) to require this termination of such a title IV allowance's tonnage authorization for purposes of the Acid Rain Program.

In addition to referencing section 402(3) to support claims that EPA is barred from adopting the CAIR model cap and trade program provisions on the use of title IV allowances, the commenters rely on other title IV provisions that they characterize as setting a "title IV cap" on SO_2 emissions. Stating that the requirement to use title IV allowances in the CAIR model SO_2 cap and trade program has the effect of reducing the "title IV cap," these commenters indicate, with little explanation, that such requirement is unlawful. In mentioning the title IV cap, the commenters are apparently referring to the fact that section 403(a)(1) (requiring allowance allocations resulting in emissions not exceeding 8.90 million tons of SO_2) and section 405(a)(3) (requiring additional allocations of 50,000 allowances) require EPA to allocate annually, starting in 2010, a total amount of allowances authorizing no more than 8.95 million tons of SO_2 emissions. The commenters' argument about how the CAIR model SO_2 cap and trade program effectively reduces the "title IV cap" appears to be that elimination of the ability to use, in the Acid Rain Program, title IV allowances that will be used for compliance in the CAIR model SO_2 cap and trade program has the effect of reducing the annual 8.95 million ton cap on SO_2 emissions. This effective reduction of the "title IV cap" seems to occur when title IV allowances are used in the CAIR SO_2 trading program with a reduced tonnage authorization so that more title IV allowances are deducted per ton of emissions than would be deducted for compliance with the Acid

essentially adopted the Senate's approach and allows the United States—either through Congressional or administrative (*i.e.*, EPA) action—to terminate or limit the allowance authorization. *See Legis. Hist. of CAAA*, Vol. I at 754, 1034, and 1084 (Oct. 27, 2000 floor statements of Sen. Symms, Sen. Baucus, and Sen. McClure indicating EPA has authority to take such action); *but see* Cong. Rec. at E 3672 (Nov. 1, 2000)(extension of remarks of Cong. Oxley indicating that only Congress has such authority).

[138] As discussed below, today's action revises the Acid Rain Program regulations to provide for source-based, instead of unit-based, compliance with the allowance-holding requirement. These revisions are adopted for reasons independent of the adoption of the CAIR model SO_2 cap and trade program, as well as to facilitate the coordination of these two SO_2 trading programs.

[139] The commenters' assertion that the sources in a State that does not participate in the CAIR SO_2 cap and trade program will be cut off from the Acid Rain cap and trade program is incorrect on its face. Such a source will continue to be subject to the allowance-holding requirement and the compliance process in § 73.35 and will not be subject to the allowance-holding requirement and the compliance process in the CAIR model SO_2 cap and trade rule.

[140] The commenters also seem to argue that the allowance definition itself bars EPA from requiring use of Acid Rain allowances in the CAIR SO_2 trading program even on a one-allowance-per-ton-of-emissions basis. However, as noted above, the definition is silent on whether title IV allowances may or may not be used outside the Acid Rain Program.

Rain Program.[141] The commenters claim that such a reduction in the 8.95 million ton cap is contrary to title IV.

In asserting an overarching principle that EPA is barred from adopting any requirement that would have the effect of reducing the 8.95 million ton cap under title IV, the commenters do not point to any specific statutory provision in support. The EPA maintains that not only are there no such supporting provisions, but also certain title IV provisions contradict this purported principle. Specifically, while sections 403 and 405 require annual allowance allocations authorizing no more than 8.95 million tons of emissions, section 403(f) provides, as noted above, that EPA may terminate or limit the one-allowance-per-ton-of-emissions authorization for a title IV allowance.[142] Because any termination or limitation of the tonnage authorization provided by a title IV allowance for purposes of the Acid Rain Program would have the effect of reducing the total tonnage of emissions allowed by the allowance allocations (i.e., the 8.95 million ton cap) under sections 403 and 405, the commenters' claim that EPA is barred from adopting any provision that has such an effect is wrong on its face.

Commenters' Argument Based on Clean Air Markets Group Case

The commenters also state that the CAIR model SO_2 cap and trade program is unlawful under the court's holding in *Clean Air Markets Group* v. Pataki, 338 F.3d 82 (2d Cir. 2003). According to the commenters, the required use of title IV allowances in the CAIR SO_2 program constitutes an unlawful interference with the operation of the interstate title IV SO_2 trading program, presumably similar to the unlawful interference found by the court in *Clean Air Markets Group*. However, the commenters provide little explanation of how such use of title IV allowances (with or without a reduced tonnage authorization) purportedly interferes with interstate operation of the Acid Rain Program and how the holding in *Clean Air Markets Group* applies to the CAIR SO_2 program.

In *Clean Air Markets Group*, the Court reviewed a State law that imposed a monetary assessment on any title IV allowance sold by a New York utility to a utility in any of 14 specified States or subsequently transferred to such a utility, with the assessment equaling the proceeds received in the allowance sale. The law also required that each allowance sold include a covenant barring subsequent transfer of the allowance to a utility in any of those States. The Court held that the State law was pre-empted by title IV because the State law impermissibly interfered with the method chosen by Congress in title IV to reduce utilities' SO_2 emissions, *i.e.*, the opportunity for nationwide trading of title IV allowances. *Id.* at 87–88. In particular, the Court found that the assessment of 100 percent of sale proceeds "effectively bans" sales of any allowance by New York utilities to utilities in the specified States and that the restrictive covenant "indisputedly decreases" the value of the allowances. *Id.* at 88.

The EPA maintains that today's action is distinguishable from the facts and holding in *Clean Air Markets Group*. In particular, EPA believes that the exercise of its explicit authority under section 403(f) to limit the tonnage authorization of a title IV allowance in the CAIR SO_2 cap and trade program and to terminate the tonnage authorization in the Acid Rain Program once the allowance is used in the CAIR SO_2 program is consistent with—and necessary to preserve—the operation of the Acid Rain Program. Therefore, EPA concludes that its approach of limiting and terminating of the tonnage authorization of title IV allowances does not impermissibly interfere with the interstate operation of the Acid Rain Program and is reasonable.

Unlike the circumstances in *Clean Air Markets Group*, under EPA's approach in today's action, each title IV allowance is freely transferable nationwide unless and until a source uses the allowance to meet the allowance-holding requirements of the CAIR SO_2 program, at which time the allowance is deducted from the source's allowance tracking system account and retired for purposes of both the CAIR SO_2 program and the Acid Rain Program. Further, EPA expects that the ability to use title IV allowances to meet the more stringent emission limitation under the CAIR SO_2 program to maintain or increase (not decrease) the value of each title IV allowance, until the allowance is used to meet the CAIR SO_2 program allowance-holding requirement and is retired.

Of course, this retirement of title IV allowances once they are used to meet the CAIR allowance-holding requirement means that they cannot thereafter be transferred to any person or be used again, *e.g.*, to meet the Acid Rain Program allowance-holding requirement. As noted by the Court in *Clean Air Markets Group*, section 403(b) provides that title IV allowances "may be transferred among designated representatives of owners or operators of affected sources under [title IV] and any other person who holds such allowances, as provided by the allowance system regulations" promulgated by EPA.[143] 42 U.S.C. 7651b(b). Moreover, section 403(d)(1) requires that the allowance system regulations "specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system." 42 U.S.C. 7651b(d). In the context of these statutory requirements, EPA maintains that, on balance, the retirement of title IV allowances used for compliance in the CAIR model SO_2 cap and trade program does not constitute impermissible interference with the interstate operation of the Acid Rain Program, but rather is consistent with, and necessary to preserve, the operation of the Acid Rain Program.

As noted above, the imposition of an SO_2 emission limitation (such as in today's action) that is significantly more stringent than the one under title IV and covers most of the sources and emissions covered by title IV—but without addressing the impact on the Acid Rain Program—would likely have several adverse consequences. These adverse consequences would be: A significant excess of title IV allowances; a collapse of the price of title IV allowances; disruption of the title IV allowance market and the title IV SO_2 cap and trade system; and potential SO_2 emission increases, particularly in States outside the CAIR SO_2 region. The EPA modeling indicates that, in 2010, EGU SO_2 emissions in States not affected by the CAIR SO_2 program would increase by about 260,000 tons (or about 29 percent of the approximately 0.9 million tons of SO_2 emissions projected for the non-CAIR SO_2 region in 2010) in the absence of an approach for addressing the impact of the CAIR SO_2 program on title IV. This

[141] Similarly, to the extent title IV allowances are used in the CAIR SO_2 trading program by non-Acid Rain sources, the "title IV cap" seems to be effectively reduced because more allowances are used in the CAIR SO_2 trading program and effectively removed from use in the Acid Rain Program.

[142] In light of this provision, the statement in the NPR (particularly as it is interpreted by the commenters) that EPA lacks authority to tighten the requirements of title IV (69 FR 4618, col. 1) is overly broad and is not repeated or adopted in today's preamble.

[143] While section 403(b) (as well as section 403(d)) refer specifically to the allowance system regulations required to be promulgated by the EPA Administrator within 18 months of November 15, 1990 (the enactment date of the CAA), the EPA Administrator has authority under section 301 to amend such regulations "as necessary to carry out his functions under [the CAA]." 42 U.S.C. 7601.

is because, with the imposition of the more stringent CAIR SO_2 emission limitation in the CAIR SO_2 region, this more stringent limitation becomes the binding limitation for sources in that region. These CAIR SO_2 sources must comply with, and cannot use title IV allowances to exceed, the CAIR SO_2 emission limitation. Consequently, the portion of the title IV allowances that equals the difference between the CAIR and the title IV emission limitations is excess and would be available for use only by Acid Rain sources that are outside the CAIR SO_2 region.

This excess amount of title IV allowances is potentially very significant. Today's action requires that the States in the CAIR SO_2 region achieve an amount of SO_2 emission reductions in 2010 and 2015 equal to 50 percent and 65 percent, respectively, of the amount of title IV allowances (about 7.3 million allowances out of the total nationwide allocation of 8.95 million allowances) allocated to the units in the CAIR SO_2 region. If the States achieve all the required CAIR SO_2 reductions through emission reductions by EGUs (which are largely the same units that are subject to the Acid Rain Program) and if EGUs held only one title IV allowance for each ton of SO_2 emissions as required in the Acid Rain Program, the amount of surplus allowances allocated to the States in the CAIR SO_2 region would be about 3.65 million allowances and 4.75 million allowances, respectively in 2010 and 2015.[144] Moreover, the vast majority of EGUs nationwide (about 90 percent) and of EGU SO_2 emissions nationwide (about 90 percent) are covered by the CAIR SO_2 program. The net result would be a large surplus of title IV allowances that would not be usable in the CAIR SO_2 region and would be usable only by the small subset of EGUs (about 10 percent) located in non-CAIR SO_2 region States. Looking at the nation as a whole (both CAIR and non-CAIR SO_2 States) in 2010, there would be total allocations in the Acid Rain Program of 8.95 million title IV allowances but, according to EPA modeling and analysis of the CAIR without a requirement to retire surplus title IV allowances, total projected SO_2 emissions for EGUs of only about 4.8 million tons.[145] Based on the principles of supply and demand, EPA concludes that, with the amount of allowances allocated nation wide exceeding SO_2 emissions for EGUs nationwide in 2010 by about 86 percent (*i.e.*, 8.95 million allowances minus 4.8 million tons divided by 4.8 million tons), the value of title IV allowances would fall to zero, and all but 260,000 of the surplus allowances would have no market and so, as a practical matter, would not be transferable.

The EPA notes that this effect on allowances would occur no matter how the State implements the more stringent SO_2 emission limitation required under the CAIR, *e.g.*, whether implementation is through a new cap and trade program (like in the model rule) or through a fixed (command and control) tonnage emission limit imposed on each individual source. Consequently, the alternatives faced by EPA are either: (1) To establish a CAIR model cap and trade program (or allow States to use another means of achieving CAIR SO_2 emissions reductions) that does not retire the 3.65 million surplus allowances and that results in the devaluation of all title IV allowances to zero and the effective non-transferability of all but 260,000 of the 3.65 million surplus allowances in 2010; or, as provided in today's action, (2) to adopt a CAIR SO_2 model cap and trade program (or another means of achieving reductions) that retires the 3.65 million surplus allowances and that results in the non-transferability of the entire 3.65 million surplus of title IV allowances and ensures the remaining, unused title IV allowances have market value. Thus, with regard to the impact on the transferability of title IV allowances, EPA's decision to adopt the second alternative of retiring the surplus allowances adversely affects the transferability of only a relatively small amount (260,000 out of 8.95 million per year) of allowances, as compared to the amount of allowances whose transferability would be adversely affected under the first alternative.

Moreover, with the total collapse of the title IV allowance price in the Acid Rain Program, the nationwide cap and trade system under title IV—which would be the binding cap and trade system only for sources in the States outside the CAIR SO_2 region—would lose all efficacy. The title IV cap and trade system operates by: Making owners of sources pay for the authorization to emit SO_2 by surrendering, to EPA, allowances that have a market value; and by allowing owners (*e.g.*, those who choose to reduce emissions) to sell unused allowances. Whether the sources' allowances were originally allocated to the sources or were purchased, the owners must decide the extent to which it is more efficient to give up the market value of such allowances or to reduce emissions. If title IV allowances were to have no market value, the title IV cap and trade system would no longer affect the choice of whether to emit or to reduce emissions.[146]

The EPA maintains that such a result is contrary to Congressional intent. The purposes of title IV include not only reductions of annual SO_2 emissions from 1980 levels, but also the encouragement of "energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with the provisions of this title, for reducing air pollution and other adverse impacts of energy production and use." 42 U.S.C. 7651(b). Reflecting these purposes, Congress required EPA to promulgate allowance system regulations for the Acid Rain Program that would promote "an orderly and competitive functioning of the allowance system." 42 U.S.C. 7651b(d)(1). *See* Sen. Rep. No. 101–228, 101st Cong., 1st Sess. at 320 (explaining that "the allowance system is intended to maximize the economic efficiency of the program both to minimize costs and to create incentives for aggressive and innovative efforts to control pollution"). As discussed above, if title IV allowances were to have no market value, the cap and trade system under title IV would no longer affect owners' decisions on whether to emit or to control emissions and so would no longer provide encouragement (*e.g.*,

[144] The surpluses for 2010 and 2015 respectively are calculated as: 7.3 million allowances minus ((100 percent minus the percentage reduction requirement for the year) times 7.3 million allowances).

[145] The 4.8 million ton figure is the sum of: 3.65 million tons of emissions (equal to the tonnage equivalent of the allowance allocations in the CAIR SO_2 region); plus about 0.9 million tons of emissions in the non-CAIR SO_2 region with the retirement of surplus title IV allowances; plus 260,000 tons of increased non-CAIR SO_2 region emissions if the surplus title IV allowances are not retired.

[146] *See* Sen. Rep. No. 101–228, 101st Cong., 1st Sess. at 324 (Dec. 20, 1989) (stating that "[a]llowances are intended to function like a currency that is sufficiently valuable to stimulate efforts to acquire it through innovative and aggressive efforts to reduce emissions more than required" and that, in the event of "inflation in the currency," the incentives to "reduce pollution * * * will be seriously weakened." In the instant case, without a requirement to retire excess title IV allowances, the currency would be inflated to a value of zero. *See also Legis. Hist. of CAAA*, Vol. I at 1033 (Oct. 27, 1990 floor statement of Sen. Baucus explaining that "[s]ince units can gain cash revenues from the sale of allowances they do not use, they will have a financial incentive both to make greater-than-required reductions and/or reductions earlier than required" and that "incentives created by the allowance market should stimulate innovations in the technologies and strategies used to reduce emissions" including energy efficiency).

incentives for innovation) for avoidance or reduction of SO_2 emissions.[147]

In addition, EPA is concerned that such disruption of the title IV allowance market and the title IV SO_2 cap and trade system would significantly erode confidence in cap and trade programs in general and the CAIR model cap and trade programs in particular. As noted above, under the Acid Rain Program, companies have made billions of dollars of investments in emission controls in order to be able to sell excess title IV allowances and in purchasing title IV allowances for future compliance (*e.g.*, under annual, 1-day allowance auctions held by EPA, one as recently as March 22, 2004 when title IV allowances were purchased for about $50 million). While in a market-based program like the Acid Rain Program, investments are necessarily subject to the vagaries of the market, EPA believes that it should try, to the extent possible consistent with statutory requirements, to avoid taking administrative actions that would cause such extensive disruption of the Acid Rain Program. Allowing such disruption to occur could significantly reduce the willingness of owners of sources in new cap and trade programs to invest in measures that would result in excess allowances for sale or to purchase allowances for compliance. To the extent owners would ignore the allowance-trading option and simply control emissions to the level equal to their source's allocations, this would obviate the incentives for innovation, and hamper realization of the potential for cost savings, that would otherwise be provided by new cap and trade programs (such as the CAIR model cap and trade programs).

Finally, as noted above, such disruption of the Acid Rain Program would potentially result in significantly increased SO_2 emissions (about 29 percent in 2010) in States covered by the Acid Rain Program but outside the CAIR SO_2 region.[148] This would have the effect of reversing, at least in part, the beneficial effect that the Acid Rain Program has had on SO_2 emissions in those States, even though the overall goal of nationwide SO_2 emissions reductions would still be met. *See* 42 U.S.C. (a)(1) (Congressional finding that "the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health").

In light of these considerations,[149] EPA concludes, on balance, that structuring the CAIR model SO_2 cap and trade program in a way that avoids such extensive disruption of the Acid Rain Program (*i.e.*, by requiring retirement from the Acid Rain Program of title IV allowances used for compliance in the CAIR SO_2 program) does not constitute impermissible interference with the interstate operation of the Acid Rain Program. Rather, this approach in the model SO_2 cap and trade rule is consistent with, and preserves, such operation—while providing States a tool for imposing the more stringent SO_2 emission limitations required under title I—and is a reasonable exercise of EPA's authority under section 403(f) to terminate or limit the tonnage authorization of title IV allowances.

2. Legal Authority for Requiring Retirement of Excess Title IV Allowances if State Does Not Use CAIR Model SO_2 Cap and Trade Program

As discussed above, a State has the additional options of achieving the SO_2 emissions reductions required by today's actions through: EGU emission reductions only but without using the model SO_2 cap and trade rule; some EGU and some non-EGU emissions reductions; or non-EGU reductions only. The requirement to retire excess title IV allowances applies only in the first and second of these three additional options. The State must retire an amount of title IV allowances equal to the total amount of title IV allowances allocated to units in the State minus the amount of allowances equivalent to the tonnage cap set by the State on EGUs' SO_2 emissions and can choose what mechanism to use to achieve such retirement. The EPA has the authority to require that the State include in its SIP a mechanism for retiring the excess title IV allowances that will result under these two options.

As discussed above, EPA has the authority under section 403(f) to terminate or limit the authorization to emit otherwise provided by a title IV allowance. Specifically, EPA has the authority to: require that any EGU SO_2 emission reduction program, chosen by a State to meet (in full or in part) the requirements of section 110(a)(2)(D), include provisions for retiring excess title IV allowances resulting from the implementation of the more stringent emission reduction requirement under the State program; and to require that such retired title IV allowances cannot be used in the Acid Rain Program. As discussed above, the commenters' claims that such a retirement requirement is barred by title IV (relying on, *e.g.*, the section 402(3) definition of "allowance" and on the "title IV cap") lack merit. Also, for the reasons discussed above, the retirement requirement is not unlawful under *Clean Air Markets Group* and is a reasonable exercise of EPA's authority under section 403(f) to terminate or limit the tonnage authorization of title IV allowances.

Some commenters also claim that the retirement requirement unlawfully constrains the States' authority to determine in the first instance the control measures to use in meeting emission reduction requirements necessary to comply with section 110(a)(2)(D). According to the commenters, since only EGUs are subject to title IV, the requirement to retire title IV allowances is in effect a mandate that the State control EGU emissions.

However, EPA is imposing the requirement for a State mechanism to retire title IV allowances only if the State decides in the first instance to require any EGU SO_2 emissions reductions to meet the emission reduction requirements under today's action. A State that decides not to require any EGU SO_2 emissions reductions for this purpose is not required to retire title IV allowances. Further, the amount of the required allowance retirement is limited to the amount of EGU SO_2 emissions reductions that the State decides in the first instance to require from EGUs (*i.e.*, the total title IV allowance allocations in the State minus the tonnage amount of the cap set by the State for EGUs' SO_2 emissions). In short, the allowance retirement requirement echoes the State's decision in the first instance concerning the amount of SO_2 emissions reductions to require from EGUs in the State. The EPA simply requires the State to implement the State's EGU–SO_2-emission-reduction-requirement decision in a manner that avoids the otherwise likely, extreme disruption of the title IV SO_2 cap and trade system that is described above. Further, the

[147] While the title IV cap and trade system could be replaced by a new CAIR SO_2 cap and trade system that did not address the problems caused by surplus title IV allowance, that new cap and trade system would not be nationwide like the title IV cap and trade system and so would not cover sources outside the CAIR SO_2 region.

[148] The EPA notes that the potential for increased emissions *within* the CAIR SO_2 region would occur before the implementation of the CAIR SO_2 program and is addressed by allowing pre-2010 banked title IV allowances to be used to meet the CAIR allowance holding requirement beginning in 2010.

[149] While the potential for increased emissions outside the CAIR SO_2 region supports EPA's conclusion, EPA maintains that, even in the absence of any such increase, the other considerations discussed above are sufficient to justify the conclusion that the retirement of title IV allowances does not impermissibly interfere with the Acid Rain Program and is reasonable.

State may choose what mechanism to include in its SIP revision for achieving the required allowance retirement, and EPA will review the effectiveness of the mechanism in achieving such retirement, and approve and adopt the mechanism if appropriate, in an EPA rulemaking concerning the SIP revision. Therefore, EPA concludes that the allowance-retirement requirement is lawful and is a reasonable condition for EPA approval of those State SIPs that require EGU SO_2 emission reductions without using the CAIR model SO_2 trading program.

The EPA notes that the requirement to retire excess title IV allowances—where a State adopts the CAIR model SO_2 trading program or where a State SIP obtains EGU emissions reductions through some other means—is reflected in provisions in both the proposed rules in the SNPR (*i.e.*, in proposed §§ 51.124(p) and 96.254(b)) and in the final rules adopted by today's action (*i.e.*, in final §§ 51.124(p) and 96.254(b)). In reviewing the proposed rules in light of the comments received, EPA has concluded that, for consistency and clarity, the Acid Rain Program regulations should also reference this same retirement requirement. Consequently, today's action adds a new paragraph (a)(3) to § 73.35 of the Acid Rain Program regulations that reiterates the requirement—addressed in the preamble and regulations in both the SNPR and today's action—that title IV allowances previously used to meet the allowance-holding requirement in the CAIR model trading program in § 96.254(b) or otherwise retired in accordance with § 51.124(p) cannot be used to meet the allowance-holding requirement in the Acid Rain Program. Additional revisions of the Acid Rain Program regulations are discussed below.

3. Revisions to Acid Rain Regulations

In the SNPR, EPA proposed to revise the Acid Rain Program regulations, effective July 1, 2005, to implement the allowance-holding requirement on a source-by-source, rather than on a unit-by-unit, basis. Instead of requiring each unit to hold an amount of allowances in its Allowance Tracking System account (as of the allowance transfer deadline) at least equal to the tonnage of SO_2 emissions for the unit in the preceding calendar year, the proposal required each source to hold an amount of allowances in its Allowance Tracking System account at least equal to the tonnage of SO_2 emissions for all affected units at the source for such calendar year. Because language reflecting or referencing the unit-by-unit compliance approach is included in many provisions of the Acid Rain Program regulations, a significant number of proposed rule revisions were necessary to implement source-by-source allowance holding.

In today's final rule, EPA is adopting, with minor modifications, the proposed rule revisions implementing source-by-source compliance with the allowance-holding requirement. As explained in detail in the SNPR (69 FR 32698–32701), EPA finds that: Title IV is ambiguous with regard to whether unit-by-unit compliance is required and so EPA has discretion in this matter; it is important to provide additional compliance flexibility by allowing a unit at a source to use allowances from any other unit at the same source; and many other, non-allowance-holding provisions of title IV evidence a unit-by-unit orientation. Further, as discussed in the SNPR, EPA concludes that the adoption of source-level compliance reasonably balances these considerations. In balancing these considerations, EPA also concludes that company-level compliance is not appropriate because it represents too much of a deviation from the unit-by-unit orientation in the non-allowance-holding provisions of title IV and is likely to require much more dramatic changes in the operation of the Acid Rain Program. *See* 69 FR 32699–700. It is important to note that the final rule revisions, like the proposed revisions, change only the allowance-holding requirement and not the emissions monitoring and reporting requirements, which continue to be applied unit by unit.

In today's action, EPA is making the source-level-compliance rule revisions effective July 1, 2006, which is 1 year later than proposed. The shift from unit-level to source-level compliance will require software changes and testing to ensure that the Allowance Tracking System operates properly. Currently, EPA is in the process of conducting a general review and re-engineering of the Allowance Tracking System and Emissions Tracking System and anticipates completing the process in 2006. The process of shifting the Allowance Tracking System to source-level compliance will be much more efficient and less likely to have adverse results on the system if the shift is coordinated with the general review and re-engineering and therefore implemented starting July 1, 2006. Further, as discussed below, this delay of implementation for 1 additional year will give owners additional time to make changes that they determine are necessary in order to adapt to source-level compliance.

Some commenters support the shift to source-by-source allowance holding, and some oppose the change. One commenter opposing the change claims that a source-by-source allowance-holding requirement is "contrary to market-based principles." According to the commenter, market-based systems give operators the tools for achieving compliance through allowance transfers, but with source-level compliance the operators do not have to take any action to maintain sufficient allowances because EPA will move the allowances around for them.

The commenter's argument is based on an incorrect premise. Whether compliance is unit-by-unit or source-by-source, the owner or owners of the affected units at each source must take the same types of actions in order to comply with the applicable allowance-holding requirement. In particular, under source-level compliance, such owner or owners must reduce emissions, retain allowances allocated to such units, obtain additional allowances, or take a combination of these actions to ensure that the Allowance Tracking System account for the source holds enough allowances to cover the total emissions of the affected units at the source. The owner or owners also have the option of reducing emissions below allocations so that there are extra allowances available to hold for future use or sale. If the owner or owners do not have enough allowances to cover the emissions from the source, EPA will not move, on its own initiative, allowances into the source's compliance account from other sources' accounts or from general accounts, even if there are extra allowances in the other accounts. The only difference between the types of actions owners must take under the unit-level and source-level approaches is that, under unit-level compliance, the owners must transfer allowances from one unit at a source to a second unit at that source in order to use the first unit's allowances for compliance by the second unit while, under source-level compliance, any allowance held for compliance for the first unit can be used—without a transfer—for compliance by the second unit. This difference is reflected in the Allowance Tracking System, which, under the unit-level approach, includes a separate account for each unit and, under the source-level approach, includes a single account for all the affected units at a single source.

In summary, the mechanism, and the owners' responsibilities, for achieving

compliance with the allowance-holding requirements are analogous under unit-by-unit and source-by-source compliance, except that, under source-by-source compliance, allowances need not be transferred among units at the same source. The EPA does not believe that the source-by-source approach is any less market-based than the unit-by-unit approach. Owners will still have the ability to reduce emissions or purchase or sell allowances and the responsibility to take actions (including the holding of extra allowances) to ensure they have enough allowances to cover emissions. Moreover, the market-price of allowances will still play a crucial role in owners' decisions on what actions to take. The EPA's adoption of source-by-source compliance preserves market-based principles, while reasonably balancing of the ambiguity of title IV, the need for additional compliance flexibility, and the unit-by-unit orientation of many provisions in title IV. *See* 69 FR 32699–700.

The commenter also argues that having a source-level allowance-holding requirement in the Acid Rain Program (and the CAIR model cap and trade program) is inconsistent with unit-level compliance in the NO_X SIP Call cap and trade program. However, other than pointing out this difference, the commenter fails to explain why the programs must be identical in this regard. Based on experience with the Acid Rain Program (as well as the NO_X SIP Call trading program), EPA concludes that a source-level allowance-holding requirement will result in a somewhat less complicated program and a reduced likelihood of inadvertent, minor errors, while achieving the program's environmental goals. *See* 69 FR 32699–700.

The commenter suggests that, instead of adopting source-level compliance, EPA revise the Acid Rain Program regulations to allow for source over-draft accounts, like those allowed in the NO_X SIP Call cap and trade program. Under the NO_X SIP Call program, each source may have a source over-draft account, in which may be held extra allowances that may be used for compliance by any affected unit at the source. However, EPA believes that source-level compliance is a better approach than unit-level compliance with over-draft accounts. Relatively few owners in the NO_X SIP Call cap and trade program actually put allowances in over-draft accounts, and achievement of compliance is made more complicated by the ability of all units at a source to draw on the over-draft account (if any allowances are put in it) but the inability of any unit to use extra allowances held instead by another unit at the source. Consequently, rather than adopting in the Acid Rain Program the unit-level approach with over-draft accounts, EPA is today adopting the source-level approach in the Acid Rain Program and may consider in the future, as appropriate, adopting the source-level approach in other programs using unit-level compliance.

One commenter states that EPA should revise the Acid Rain Program regulations to allow owners, each year, the option of choosing whether to use unit-level or source-level compliance. According to the commenter, significant investments have been made to monitor and report emissions and surrender allowances under the existing Acid Rain Program regulations, and shifting to source-level compliance will require substantial resources and time. The commenter also states that unit-based compliance should be retained as an option "to accommodate joint ownership and other special arrangements that may not affect an entire facility."

The EPA rejects the suggestion of allowing each owner the option, for each year and for each source, of choosing between unit-level and source-level compliance. Such an approach would significantly complicate the achievement by sources, and the determination by EPA, of compliance. The potential for error (*e.g.*, due to erroneous assumptions about whether unit-or source-level compliance would be applicable to a particular source for a particular year) on the part of owners or EPA would be significantly increased. Moreover, this complicated approach would result in inconsistent treatment from source to source and year-to-year. Further, the commenter provided only vague assertions about the benefits of unit-based compliance in certain circumstances and did not assert—much less show—that source-level compliance cannot be accommodated under those circumstances. The EPA maintains that the only reasonable options for the allowance-holding requirement in the Acid Rain Program are either generally requiring compliance by all sources each year on a unit-level basis (as in the existing regulations) or requiring compliance by all sources each year on a source-level basis (as in the proposed revisions to the regulations). For the reasons discussed above, EPA believes that source-level compliance for the allowance-holding requirement is preferable. By postponing until July 1, 2006 the effective date of the rule revisions shifting to source-level compliance (with the result that 2006 is the first year of source-level compliance), EPA is providing owners a reasonable amount of time to make any necessary adjustments, such as those claimed by the commenter. Further, as noted above, the rule revisions change only the allowance-holding requirement and not the emissions monitoring and reporting requirements. This should limit the scope of adjustments necessary for owners to implement source-level compliance and will preserve the availability of reliable, unit-level emissions data.

Because unit-level compliance is reflected throughout the Acid Rain Program regulations, numerous revisions of the regulations are necessary to implement source-level compliance. (None of these changes are to the emissions monitoring and reporting provisions in part 75 since monitoring and reporting continue to be on a unit basis.) One commenter requested that EPA provide "more in-depth detail" on the proposed revisions. However, in the SNPR, EPA described the types of, and reasons for, revisions that are necessary for source-level compliance (69 FR 32700–01) and set forth all of the specific, proposed changes (69 FR 3273–41). Moreover, no commenters stated that they did not understand any specific, proposed revision or the reason for any specific revision. The EPA notes that in reviewing the proposed Acid Rain rule revisions in light of the comments, EPA found some additional references in the Acid Rain rule to unit-level compliance that should be revised to reflect source-level compliance. In today's action, EPA is adopting revisions of these additional references (*e.g.*, changing references to a "unit's account" or a "unit account" to a source's "compliance account") that are analogous to the revisions specifically identified in the SNPR.[150]

Another commenter opposed the rule revisions implementing source-level compliance on several other grounds. The commenter claims, without citing any statutory support, that the Acid Rain Program is based on "control of emissions at the unit level" so that, in the event of excess emissions, the "source as a whole would not be punished" and "corrective action could take place" at the particular unit. According to the commenter, source-level compliance will: Make it harder to determine which unit caused excess emissions; make the existing Acid Rain

[150] This approach is consistent with the SNPR, where EPA proposed to convert all references, including any initially missed in the SNPR, from unit- to source-level compliance (69 FR 32700).

permits meaningless; make the individual unit allowance allocations meaningless; and cause confusion over which units at a source are affected units.

While there are many non-allowance-holding provisions in title IV that have a unit-by-unit orientation, EPA disagrees with the commenter's basic assertion that the purpose of the Acid Rain Program is to control emissions on a unit-by-unit basis and that there is a need to "distinguish" the compliance of each individual unit. The provisions concerning application of the allowance-holding requirement are ambiguous as to whether EPA must implement the requirement on a unit-level or a source-level, and the environmental benefits of the Acid Rain Program will still be realized with source-level compliance. *See* 69 FR 32699–700. Further, while EPA will determine compliance on a source-by-source basis, nothing in the regulations prevents owners (*e.g.*, owners of units at sources with multiple units and multiple owners or owners of units with multiple owners and exhausting through a common stack) from determining by agreement which owners will bear any excess emissions penalties that occur at the plant and have to take correction actions. Indeed, owners are likely to already have these types of agreements in cases of units or sources with multiple owners. This is because the Acid Rain Program regulations already allow a unit at a multi-unit source to use some allowances from other units at the source (albeit to cover most but not all of the potential excess emissions) and already allow one unit exhausting from a common stack to use allowances from another unit at that stack (without any limitation on such use). *See* 40 CFR 73.35(b)(3) and (e). In addition, while the Acid Rain permits will have to be revised in the future to reflect source-level compliance, today's rule does not make source-level compliance effective until 2006. Permits will not have to be revised until around the end of 2006, which should provide States a reasonable opportunity to amend the permits. Contrary to the claims of the commenter, source-level compliance does not make the unit-by-unit allocations meaningless; the unit-by-unit allocations (set forth in Table 2 of § 72.10) will determine the amount of allocations reflected in each Allowance Tracking System source account, which amount will equal the sum of the allocations for all affected units at the source. Finally, the commenter failed to explain how the source-level allowance-holding requirement could cause "confusion" over which units are affected units. This source-level requirement does not change the applicability provisions, which are still applied unit by unit.

As discussed in the SNPR, EPA proposed—in addition to the rule revisions to implement source-level compliance—other revisions of the Acid Rain Program regulations in order to facilitate coordination of the Acid Rain Program and the CAIR SO_2 cap and trade program. These additional revisions were described and explained in the SNPR (69 FR 32701). The EPA is adopting these revisions for the reasons in the SNPR, as amplified below. Most of these revisions are supported, or not opposed, by commenters, but some commenters objected to certain revisions.

For example, EPA noted that it had recently changed the "cogeneration unit" definition in § 72.2 in June 2002 (67 FR 40394, 40420; June 12, 2002). The original definition in § 72.2 had been used since the commencement of the Acid Rain Program. The only significant difference between the original and revised definitions is that the former refers to a unit "having the equipment used to produce" electricity and useful thermal energy through sequential use of energy, while the latter simply refers to a unit "that produces" electricity and useful thermal energy in that manner. The reason that EPA gave for revising the definition in June 2002 was to conform with the definition in the Section 126 rule. However, the Section 126 rule (and the NO_X SIP Call) did not actually specify a "cogeneration unit" definition. Consequently, there is no reason to use the June 2002 revised definition. Moreover, EPA is concerned that the change in the definition of "cogeneration unit" as of June 2002 may cause confusion or raise question about what units qualify for exemptions for "cogeneration units" from the Acid Rain Program. Under these circumstances, EPA concludes that the definition should be changed back to the original definition in § 72.2 and, in any event, intends to interpret the June 2002 revised definition as having the same meaning as the original definition. One commenter raised concerns that EPA did not provide any "detailed analysis" of the implications of changing the "cogeneration unit" definition. However, as discussed above, the change simply reinstates the definition that had been used in the Acid Rain Program from the initial promulgation of implementing regulations in 1993 until 2002. No commenter asserted that reverting to the longstanding, original definition would be disruptive.

Another Acid Rain Program rule revision proposed in the SNPR is the elimination of the requirement for owners and operators to submit an annual compliance certification report for each source. One commenter expressed concern, because the purpose of the annual certification is to ensure that the designated representative is "aware and has assured the quality of the data" being submitted to EPA. However, as noted in the SNPR, designated representatives must evidence such awareness and compliance by submitting, with each quarterly emissions report, a certification that the monitoring and reporting requirements under part 75 of the Acid Rain Program regulations have been met. *See* 40 CFR 75.64(c). Quarterly emissions reports are available on-line to the public and the States. In addition, owners and operators of sources subject to the Acid Rain Program must submit, under title V of the CAA, annual compliance certification reports concerning all CAA requirements (including Acid Rain Program requirements). Under these circumstances, EPA maintains that the separate Acid Rain Program annual compliance certification reports are duplicative and unnecessary. The EPA notes that it appears that few, if any, requests for copies of these Acid Rain Program reports have been made by States or any other persons since the commencement of the Acid Rain Program. Apparently, other certifications and submissions required of owners and operators have been sufficient for the purposes cited by the commenter.

The SNPR also included proposed revisions eliminating the requirement under the Acid Rain Program for a 1-day newspaper notice for designation of designated representatives and authorized account representatives. One commenter suggests that this notice should be replaced by a requirement to notify the State permitting authority. The EPA notes that information on designated representatives and authorized account representatives is already available to State permitting authorities through on-line access to the Allowance Tracking System. Moreover, EPA is in the process of developing, and anticipates establishing in the near future, the ability to send State permitting authorities (at their request) on-line notices of changes in designated representatives (who are also the authorized account representatives for affected sources' accounts).

Other proposed Acid Rain Program rule revisions on which EPA received adverse comment are the removal of § 73.32 (prescribing the contents of an allowance account) and § 73.51 (prohibiting the transfer of allowances from a future year subaccount to a subaccount for an earlier year). Section 73.32 sets forth a rather self-evident list of information that must be recorded in an allowance account in the Allowance Tracking System, such as the name of the authorized account representative, the persons represented by the authorized account representative, and the transfers of allowances in and out of the account. This section also references information on compliance or current year subaccounts and future year subaccounts, as well as emissions information. As discussed in the SNPR, several items on the list of informational contents for allowance accounts are out-of-date in that they do not reflect how the electronic Allowance Tracking System operates or will operate in the near future. For example, the electronic Allowance Tracking System does not currently use or refer to subaccounts, which will continue to be unnecessary in the context of source-level compliance.[151] *See* 69 FR 32700–01. In addition, while § 73.32 states that emissions data are reflected in the Allowance Tracking System account, such data are currently available instead through the electronic Emissions Tracking System. Because the information list in § 73.32 contains either self-evident items or items that are out-of-date and because the NO_X Allowance Tracking System has been operating successfully even though the model NO_X Budget cap and trade rule and State cap and trade rules under the NO_X SIP Call lack a provision analogous to § 73.32, EPA is removing § 73.32. EPA notes that the removal of the section will not mean that the information contained in allowance accounts "can be changed at will." The format for allowance accounts is set forth in the electronic Allowance Tracking System and implements the requirements in the Acid Rain Program regulations concerning the holding, transferring, recording, and deducting of allowances.

Section 73.51 prohibits the transfer of allowances from a future year subaccount to a subaccount for an earlier year. The removal of this section is consistent with the elimination throughout the rest of the Acid Rain Program regulations, as discussed in the SNPR (*id.*), of any references to such subaccounts. Further, the prohibition on using allowances allocated for a year to meet the allowance-holding requirement for a prior year is retained in other provisions of the Acid Rain Program regulations. Consequently, EPA is removing § 73.51.

C. How Does the Rule Interact With the Regional Haze Program?

This section discusses the relationship of the CAIR cap and trade program for EGUs with the regional haze program under sections 169A and 169B of the CAA, in particular the requirements for Best Available Retrofit Technology (BART) for certain source categories including EGUs. The legislative and regulatory background of the BART provisions were presented in some detail in the SNPR. (See 69 FR 32684, 32702–704, June 10, 2004). In brief, BART regulations consist of two components. The first, promulgated in 1980, addresses visibility impairment that can be "reasonably attributed" to a single source or small group of sources. (45 FR 80085; December 2, 1980, codified at 40 CFR 51.302). The second component addresses BART in relation to regional haze (visibility impairment caused by a multitude of broadly distributed sources) and was promulgated as part of the Regional Haze Rule. (64 FR 35714; July 1, 1999). Certain parts of the BART provisions in that rule were vacated by the U.S. Court of Appeals for the DC Circuit in *American Corn Growers et al.* v. *EPA*, 291 F.3d 1 (DC Cir., 2002). To address that decision, in May 2004, EPA proposed changes to the Regional Haze Rule and reproposed the Guidelines for BART Determinations (originally proposed in 2001) (69 FR 25185, May 5, 2004).

On February 18, 2005, the DC Circuit decided another case dealing with BART and a BART alternative program, *Center for Energy and Economic Development* v. *EPA*, No. 03–1222, (DC Cir. Feb. 18, 2005) ("*CEED*"). In this case, the court granted a petition challenging provisions of the regional haze rule governing the optional emissions trading program for certain western States and Tribes (the "WRAP Annex Rule"). The holdings of the case are relevant to today's action in several respects.

Most importantly for purposes of the CAIR, *CEED* affirmed EPA's interpretation of CAA 169A(b)(2) as allowing for non-BART alternatives where those alternatives make greater progress than BART. (*CEED*, slip. op. at 13) (finding that EPA's interpretation of CAA 169(a)(2) as requiring BART only as necessary to make reasonable progress passes the two-pronged Chevron test).

The particular provisions involved in *CEED* applied, on an optional basis, only to nine western States[152] (none of which are in the CAIR region) and the Tribes therein. The provisions, contained in 40 CFR 51.309 ("section 309") required among other things that States choosing to participate in a "backstop"[153] cap and trade program must demonstrate that the emissions reductions under the program resulted in greater progress towards the national visibility goals than would BART. At issue was the particular methodology required for this demonstration. Specifically, EPA's rule required that visibility improvements under source-specific BART—the benchmark for comparison to the cap and trade program—must be calculated based on the application of BART controls to all sources subject to BART.[154] Although *American Corn Growers* had vacated this cumulative visibility approach in the context of determining BART for individual sources, EPA believed that it was still permissible to require this methodology in the context of a BART-alternative program. The DC Circuit in *CEED* held otherwise, stating: "EPA cannot under § 309 require states to exceed invalid emission reductions (or, to put it more exactly, limit them to a § 309 alternative defined by an unlawful methodology)." (*Id.* at 14).

Thus, *CEED* firmly established two principles: (1) The CAA allows States to substitute other programs for BART where the alternative achieves greater progress, and (2) EPA may not require States to evaluate visibility improvement on a cumulative basis as a condition for approval of a BART-alternative. The first principle validates EPA's proposal to allow the CAIR to substitute for BART. The second

[151] In reviewing the proposed Acid Rain Program rule revisions, EPA found some additional references to "subaccounts" that were not specifically noted in the SNPR. For consistency and clarity in the Acid Rain Program rules, EPA is adopting in today's action revisions (*e.g.*, chaning the term "subaccount" to "compliance account") of these additional references, which revisions are analogous to those specifically set forth in the SNPR. This approach is consistent with the SNPR, where EPA proposed to convert all references, including any initially missed in the SNPR, from subaccount to compliance account, (69 FR 32700).

[152] Arizona, California, Colorado, Oregon, Idaho, Nevada, New Mexico, Utah, and Wyoming.

[153] The trading program is referred to as a "backstop" because under the WRAP Annex, States have the opportunity to achieve specified emission milestones using voluntary measures, with the trading program coming into effect only if those milestones are exceeded.

[154] The methodology is prescribed in 40 CFR 51.308(e)(2) and incorporated into § 309 by reference at 40 CFR 51.309(f).

principle is not at issue in the CAIR context, because EPA is not proposing to impose the cumulative visibility methodology upon States, nor to require States to treat the CAIR as having satisfied their BART obligations.

Nonetheless, EPA has determined that it is premature to make a final determination regarding the sufficiency of the CAIR as a BART alternative, primarily because (1) the guidelines for source-specific BART determinations, in response to *American Corn Growers* have not been finalized, and (2) there is now a need to revise the Regional Haze Rule and the guidelines for BART-alternative programs in response to *CEED*. The source-specific BART guidelines will be finalized on or before April 15, 2005, under a consent decree. The rule changes and revisions to the BART-alternative guidelines will be proposed soon thereafter.

Therefore, we are making no final determination in today's action with respect to BART. The EPA continues to believe, however, that the CAIR will result in greater progress in visibility improvement than BART, as explained below.

1. How Does This Rule Relate to Requirements for BART Under the Visibility Provisions of the CAA?

a. Supplemental Notice of Proposed Rulemaking

In the SNPR, we proposed that States which adopt the CAIR cap and trade program for SO_2 and NO_X would be allowed to treat the participation of EGUs in this program as a substitute for the application of BART controls for these pollutants to affected EGUs.[155] To give this option effect, we proposed an amendment to the Regional Haze Rule which would add a section at 40 CFR 51.308(e)(3), as follows:

> (3) A State that opts to participate in the Clean Air Interstate Rule cap and trade program under part 96 AAA–EEE need not require affected BART-eligible EGUs to install, operate, and maintain BART. A State that chooses this option may also include provisions for a geographic enhancement to the program to address the requirement under § 51.302(c) related to BART for reasonably attributable impairment from the pollutants covered by the CAIR cap and trade program.

This proposal is consistent with currently existing provisions which allow States to develop cap and trade programs or other alternative measures in lieu of the application of BART on a source specific basis. (*See* 40 CFR 51.308(e)(2) and 64 FR 35714, 35741–35743, July 1, 1999). The proposal was based on the application of the proposed two-pronged test for whether an alternative to BART is "better than BART" which was proposed in the 2001 BART guidelines and reproposed without changes in our May, 2004 proposed guidelines for BART determinations (69 FR 25184, May 5, 2004).

Specifically, the re-proposed BART Guidelines provide that if the geographic distribution of emissions reductions is anticipated to be similar under both programs, the trading program (or other alternative measure) must be shown to achieve greater overall emissions reductions than the application of source-specific BART. If the trading program is anticipated to result in a different geographic distribution of emissions reductions than would source-specific BART, the trading program must be shown to result in no decline in visibility at any Class I area, and in an overall improvement in visibility on an average basis over all affected Class I areas (69 FR 25184, 25231). Because we had not yet determined whether there is a difference in the geographic distribution of emissions reductions between the CAIR and the application of source-specific BART in the CAIR region, we assessed the difference between the two programs by evaluating the visibility impacts of each program, using this proposed two-pronged test.

The emissions projections and air quality modeling used to demonstrate that the CAIR satisfies this proposed two-pronged test were presented in a document entitled Supplemental Air Quality Modeling Technical Support Document (TSD) for the Clean Air Interstate Rule (May 4, 2004). In brief, we found that the CAIR would not result in a degradation of visibility from current conditions at any Class I Area nationwide. Within the CAIR-affected States and New England, EPA found that the CAIR would produce greater visibility benefits—specifically, an average improvement of 2.0 deciviews, as compared to 1.0 for BART. The EPA also found that average visibility improvement for Class I areas nationwide would be 0.7 deciviews under the CAIR, compared to 0.4 deciviews under BART. The EPA noted in the SNPR and the TSD that because the emissions scenarios used in these analyses were developed for different purposes, the scenarios varied slightly from the scenarios which would be ideal for this test. The EPA committed to conduct additional analyses, and those analyses have now been done. The new modeling and results are discussed in more detail in section IX.C.2 below.

b. Comments and EPA's Responses

Several commenters argued that a categorical exclusion of sources from BART would violate the CAA, as interpreted by the U.S. Court of Appeals for the DC Circuit in *American Corn Growers* v. *EPA*, 291 F.3d 1, 2002, by illegally constraining the discretion Congress conferred to States in making BART determinations and by depriving States of an adequate opportunity to evaluate the emissions reductions in light of the BART requirement. Some States also expressed a desire to retain their discretion to require BART. Additionally, some commenters asserted that EPA could not offer an exemption to BART unless the conditions for exemptions provided by CAA 169A(c) are met, including a showing that the source in question will not, alone or in combination with other sources, emit any pollutant which may reasonably be anticipated to cause or contribute to impairment at any Class I area, and the concurrence of the appropriate Federal Land Manager with the exemption determination.

The EPA agrees that under the CAA and the *American Corn Growers* case, EPA may not preclude a State from conducting its own BART analysis, nor from requiring BART controls at individual sources as determined appropriate through such analysis. Accordingly, as noted above, the proposed regulatory change to the Regional Haze Rule would provide that a CAIR affected State "need not require affected BART-eligible EGUs to install, operate, and maintain BART" if such State opts to participate in the CAIR cap and trade program. The optional nature of this language ("need not" rather than "may not") is consistent with the *American Corn Growers* decision, because it does not attempt to mandate that States must consider the CAIR as having met the requirements of BART.

The SNPR preamble summarized the proposal by stating that "EPA proposes that BART-eligible EGUs in any State affected by CAIR may be exempted from BART controls for SO_2 and NO_X if that State complies with the CAIR requirements through adoption of the CAIR cap and trade programs for SO_2 and NO_X emissions." (69 FR 3270). That statement accurately reflected the optional nature of the better-than-BART substitution policy, by providing that sources "may" be granted such regulatory flexibility. However, the use of the term "exempted" in this context

[155] The SNPR preamble used the term "exemption" in describing this policy. As clarified below, and as consistent with the proposed regulatory language, the better-than-BART policy is not actually an exemption but rather an alternative means of compliance.

was somewhat imprecise. EPA agrees that sources may not be "exempt" from BART requirements unless the requirements of 169A(c) are fulfilled. The better-than-BART policy is not an "exemption" from BART; it is an alternative regulatory program that would allow Congressionally required emissions reductions from BART-eligible sources to be made in a more cost-effective manner. Moreover, as explained elsewhere in the SNPR and again below, BART-eligible EGUs would not be "exempt" from BART because, until the emissions reductions required by the CAIR are fully realized, such sources would remain subject to the possibility of being required to install BART controls if deemed necessary to meet requirements regarding reasonably attributable visibility impairment, as provided by 40 CFR 51.302.

Several commenters asserted that because Congress singled out 26 source categories for the application of BART, there is no basis in law for EPA to "exempt" some of these categories. These comments amount to facial challenges of EPA's authority to approve SIPs which contain alternative strategies, rather than source-specific BART requirements, for BART-eligible sources.

The EPA's authority to approve alternative measures to BART, where those measures achieve greater reasonable progress than would BART, was recently upheld by the DC Circuit. (*CEED*, slip. op. at 13). See also Central Arizona *Water Conservation District* v. *EPA*, 990 F.2d 1531, 1543, (1993) (Upholding EPA's interpretation of CAA 169A(b)(2)as providing discretion to adopt implementation plan provisions other than those provided by BART analyses in situations where the agency reasonably concludes that more reasonable progress will thereby be attained).

Similarly, some commenters stated that the CAIR could not substitute for BART because the CAIR and BART are authorized by separate parts of the CAA. They argue that allowing reductions required by a provision of the CAA not linked to visibility improvement to substitute for BART would alter Congress' "mandate" that certain source categories make reductions for visibility in excess of what other CAA provisions require of those sources.[156] Commenters also point to Regional Haze Rule section 308(e)(2), as evidence that reductions from other programs such as title IV and the NO_X SIP Call must be achieved in addition to, and not as a substitute for, BART. Commenters also argue that EPA (and States) will need all available tools, including BART, to meet visibility and NAAQS requirements.

Again, under our interpretation of CAA section 169A(b)(2) as upheld in *CEED* and *Central Arizona Water*, Congress did not "mandate" that emission reductions from certain source categories be obtained by the installation of BART controls. Instead, the CAA allows for alternative measures to BART—whether for EGUs or non-EGUs—where those measures result in greater reasonable progress, and as explained below, we have determined that greater reasonable progress can be obtained from the EGU sector through the use of the CAIR cap and trade program. However, if a State believes more progress can be made at affected Class I areas by utilizing BART, the State need not make the determination that the CAIR substitutes for BART in that State. Therefore, EPA is not eliminating any tools available to the States.

With respect to Regional Haze Rule section 308(e)(2), EPA does not believe that this section provides any support for the notion that emissions reductions from other programs must necessarily be in addition to, not substitute, for BART. We first note that the decision in CEED necessitates revisions to 308(e)(2), at least in the provisions requiring visibility to be evaluated on a cumulative basis in defining the BART benchmark for comparison to BART alternative programs. It remains to be seen whether 308(e)(2)(iv), which requires that emissions reductions from the BART alternative be "surplus to reductions resulting from measures adopted to meet requirements as of the baseline date of the SIP," will be changed. Even if that section remains unchanged, the CAIR complies with it. The baseline date of Regional Haze SIPs is 2002.[157] Since any emissions reduction requirements to meet the CAIR would necessarily be adopted after 2002, CAIR-required reductions would clearly be surplus to measures adopted as of the baseline year.[158]

Several commenters argued that the question of whether BART is better than the CAIR is properly addressed in the BART rulemaking, not in today's action, and that the better-than-BART determination is otherwise premature. While EPA believes that our current analysis demonstrates that the CAIR is better than BART (based on the criteria in our May 2004 BART proposal), and that the range of uncertainty regarding the presumptive BART controls for EGUs to be finalized in the BART guidelines is not likely to alter that demonstration, we agree that we cannot make a final determination that CAIR is better than BART until the changes to the regional haze regulations required by both *American Corn Growers* and *CEED* are finalized.

Several commenters felt the CAIR should be considered better than BART for a State whether or not that State participates in the CAIR cap and trade program, as long as the State achieves its emission reduction requirement under the CAIR. Conversely, one commenter felt that CAIR reductions should be considered better than BART only when a State does not participate in the cap and trade program, thereby ensuring that the reductions will occur in-State.

Our preliminary demonstration that the CAIR results in more reasonable progress than BART for EGUs is based on a comparison of emissions reductions from EGUs, and attendant air quality effects, under the CAIR as compared to under BART as proposed in May, 2004. If emissions reductions are achieved from other source sectors, a similar analysis would have to be conducted for those sector(s) before it could be determined that the reductions were better than BART for affected source categories. For example, if a State either wants to use EGU emissions reductions under the CAIR to substitute for BART for non-EGUs, or use non-EGU emissions reductions to substitute for BART for EGUs, that could be allowed as an alternative measure to BART provided a similar "better-than-BART" determination is made for the sectors involved.

A few commenters believed EPA should not limit the substitution of the CAIR for BART to States that are required to meet CAIR for both SO_2 and NO_X on an annual basis, but rather should also allow it for States which are only required to reduce NO_X during the ozone season. Because the modeling scenarios were based on the pollutants

[156] CAIR is linked to visibility improvements insofar as it attempts to make progress towards attainment of the $PM_{2.5}$ NAAQS, which would, among other things, improve visibility.

[157] See "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs," November 8, 2002, Guidance Memorandum, *http://www.epa.gov/ttn/oarpg/t1/memoranda/2002bye_gm.pdf*.

[158] The purpose of providing a cut-off year for SIP measures to which the alternative must be surplus is to prevent an untenable situation where programs being developed simultaneously must be surplus to each other. Establishing a baseline year allows States to continue to make reductions between that baseline date and the submittal of regional haze SIPs without being "penalized" for those reductions by not being allowed to count them as contributing to reasonable progress towards the national visibility goal.

covered by the CAIR in each affected State, our better-than-BART demonstration is limited to those scenarios. A State subject to the CAIR for NO_X purposes only would have to make a supplementary demonstration that BART has been satisfied for SO_2, as well as for NO_X on an annual basis.

A few commenters believed that the CAIR should satisfy BART for purposes of reasonably attributable visibility impairment as well as BART for purposes of regional haze. Several others commented that it was appropriate or legally necessary to preserve the authority of Federal Land Managers (FLMs) and States to certify impairment and make reasonable attribution determinations, which could subject a source to BART requirements even if the source is a participant in the CAIR cap and trade program. These commenters supported the use of a strategy similar to that employed by the Western Regional Air Partnership, which relies upon a Memorandum Of Understanding (MOU) between the FLMs and the States regarding the criteria by which certifications of impairment may be made, along with the possibility of "geographic enhancements" to the cap and trade program to accommodate the imposition of source-specific BART control requirements on a source within the cap and trade program.

As proposed in the SNPR, EPA continues to believe that reasonably attributable visibility impairment determinations under 40 CFR 51.302 must continue to be a viable option in order to insure against any possibility of hot-spots. We believe that a certification of reasonably attributable visibility impairment is fairly unlikely, given that there have been few such certifications since 1980, and given that the reductions from the CAIR and other recent initiatives will make such certifications decreasingly likely. We believe sources can be given sufficient regulatory certainty to enable effective participation in a cap and trade program through the use of MOUs and geographic enhancement provisions.

Some commenters believe that because section 169A(b)(2)(A) requires BART for an eligible source which may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area, EPA is without basis in law or regulation to base a better-than-BART determination on an analysis that does not evaluate visibility improvement at each and every Class I area, or one that uses averaging of visibility improvement across different Class I areas.

The criteria we applied in our present analysis—that greater reasonable progress is defined as no degradation at any Class I area, and greater overall average improvement—have not been finalized. However, we disagree with comments that 169A(b)(2)'s requirement of BART for sources reasonably anticipated to contribute to impairment at any Class I area [159] means that an alternative to the BART program must be shown to create improvement at each and every Class I area. Even if a BART alternative is deemed to satisfy BART for regional haze purposes, based on average overall improvement as opposed to improvement at each and every Class I Area, 169A(b)(2)'s trigger for BART based on impairment at any Class I area remains in effect, because a source may become subject to BART based on "reasonably attributable visibility impairment" at any area. (The EPA believes it is unlikely that a State or FLM will have need to certify reasonably attributable visibility impairment (RAVI) with respect to any EGU in the CAIR region, but nevertheless believes it is necessary to preserve this safeguard).

We also received a number of comments regarding the broader relationship between the CAIR and regional haze, including whether the CAIR meets reasonable progress requirements, as well as BART, for affected States; whether EPA should allow non-CAIR States to opt in to the CAIR cap and trade program to meet their BART requirements; and whether regional haze provisions should be used as a basis for expanding the CAIR rule to the rest of the States which were not included on the basis of contribution to $PM_{2.5}$ and ozone nonattainment. The EPA's responses to comments on these broader issues, which are not germane to the issue of whether the CAIR may substitute for BART for affected EGUs, are contained in the Response to Comment Document.

c. Today's Action

As discussed above, EPA has the authority to approve SIPs which rely upon a cap and trade program as an alternative to BART. However, at this time, we are deferring a final determination that, in EPA's view, the CAIR makes greater progress than BART for CAIR-affected States until such time as the BART guidelines for EGUs and the criteria for BART-alternative programs are finalized. At that time, contingent upon supporting analysis and our final rules governing the regional haze program, EPA will make a final determination as to whether the CAIR makes greater progress than BART, and can be relied on as an alternative measure in lieu of BART.

2. What Improvements Did EPA Make to the Bart Versus the CAIR Modeling, and What Are the New Results?

a. Supplemental Notice of Proposed Rulemaking

For the better-than-BART analysis in the SNPR, we used the Integrated Planning Model (IPM) to estimate emissions expected after implementation of a source-specific BART approach and after implementation of the CAIR cap and trade program for EGUs. We then used the Regional Modeling System for Aerosols and Deposition (REMSAD) air quality model to project the visibility impact of these IPM emissions predictions for both the CAIR and the nationwide source-specific BART scenarios. Specifically, EPA evaluated the model results for the 20 percent best days (that is, least visibility impaired) and the 20 percent worst days at 44 Class I areas throughout the country. Thirteen of these Class I areas are within States affected by the CAIR proposal, and 31 Class I areas are outside the CAIR region—29 in States to the west of the CAIR region, and 2 in New England States northeast of the CAIR region.

As explained in the SNPR, the "CAIR" scenario modeled was imperfect for purposes of this analysis in that it assumed SO_2 reductions on a nationwide basis (rather than in the CAIR region only) and assumed NO_X reductions requirements in a slightly different geographic region than covered by the proposed CAIR. The ideal scenario would have correctly represented the geographic scope of the CAIR SO_2 and NO_X reduction requirements, and included source-specific BART controls in areas outside the CAIR region. (This corrected scenario has been modeled for the NFR, as explained below).

The SNPR REMSAD modeling showed that under the proposed two-pronged test, CAIR controls achieved equal or greater visibility improvement than the application of source-specific BART to EGUs nationwide. The modeling predicted that the CAIR cap and trade program will not result in degradation of visibility, compared to

[159] The question of whether section 169A(b)(2) requires BART based on contribution to impairment at any Class I area is separate from the question of whether this section requires source-specific BART under all circumstances. As noted earlier, we interpret section 169A(b)(2) as requiring BART only as needed to make reasonable progress, thus allowing for alternative measures which make greater reasonable progress.

existing (1998–2002) visibility conditions, at any of the 44 Class I areas considered. It also indicated that CAIR emissions reductions as modeled produce significantly greater visibility improvements than source-specific BART. Specifically, for the 15 Eastern Class I areas analyzed, the average visibility improvement (on the 20 percent worst days) expected solely as a result of the CAIR was 2.0 deciviews, and the average degree of improvement predicted for source-specific BART was 1.0 deciviews. Similarly, on a national basis, the visibility modeling showed that for all 44 Class I areas evaluated, the average visibility improvement, on the 20 percent worst days, in 2015 was 0.7 deciviews under the CAIR cap and trade program, but only 0.4 deciviews under the source-specific BART approach.

b. Comments and EPA Responses

Several commenters noted that EPA did not model the "correct" emissions scenarios to compare the CAIR and BART controls. They suggested that a model run with the CAIR controls in the East and BART controls in the West should be compared to a model run with nationwide BART controls.

The EPA agrees (as we have already noted in the SNPR) that the suggested comparison of model runs is a more appropriate comparison of the CAIR and BART. The SNPR better-than-BART analysis was limited by the availability of the model results at the time. For the NFR, we have modeled nationwide BART for EGUs as proposed in the May 2004 guidelines and a separate scenario consisting of CAIR reductions in the CAIR-affected States plus BART-reductions in the remaining States (excluding Alaska and Hawaii). Additionally, we have improved the BART control assumptions (in both scenarios) by increasing the number of BART-eligible units included. Specifically, in the SNPR analysis, controls were "required" (*i.e.*, assumed by the model) for BART-eligible EGUs greater than 250 MW capacity, for both NO_X and SO_2. For today's action, BART controls are assumed for SO_2 for all BART-eligible EGU units greater than 100 MW, and NO_X controls for all BART-eligible EGU units greater than 25 MW.[160] This, along with a review of potentially BART-eligible EGUs, has expanded the universe of units assumed subject to BART in the modeling from 302 to 491.[161]

Several commenters noted that the better-than-BART visibility analysis only covered 44 Class I areas and did not adequately address visibility in all areas of the country.

For the NFR, we have significantly expanded the number of Class I areas covered by the analysis. The NPR and SNPR visibility analysis was limited by the availability of observed data from Inter-agency Monitoring of Protected Visual Environments (IMPROVE) monitors during the meteorological modeling year of 1996. There was complete IMPROVE data at 44 IMPROVE sites which represented 68 Class I areas.[162] All of the regions of the country (as defined by IMPROVE) were represented by at least one site, except the Northern Great Lakes region. For the final rule, the modeling has been updated to use a meteorological year of 2001. Therefore, the IMPROVE data for 2001 was used for the NFR better-than-BART analysis. For 2001, there were 81 IMPROVE sites with complete data,[163] representing 116 Class I areas. The NFR analysis accounts for visibility changes at 80 percent of the active IMPROVE sites in the lower 48 States. More importantly for today's rulemaking, the number of Class I areas in the East has been increased from 15 to 29 and now covers all IMPROVE-defined visibility regions within the CAIR-affected States, including the Northern Great Lakes.[164] We, therefore, believe the expanded geographic scope of Class I areas covered is sufficient for purposes of this analysis.

c. Today's Action

We have compared the two model runs (BART nationwide and BART in the West with the CAIR in the East) using the proposed two-pronged better-than-BART test. The results were analyzed at the 116 Class I areas that have complete IMPROVE data for 2001 or are represented by IMPROVE monitors with complete data. Twenty-nine of the Class I areas are in the East and 87 are in the West. Detailed modeling results for all 116 Class I areas are contained in the Better-than-BART TSD.[165] Results applicable to the better-than-BART proposed two-pronged test are summarized below.

The updated visibility analysis reaffirms that under the proposed two-pronged test, CAIR controls are better than BART for EGUs. The modeling predicts that the CAIR cap and trade program will not result in degradation of visibility on the 20 percent best or 20 percent worst days compared to the 2015 baseline conditions, at any of the 116 Class I areas considered.[166]

With respect to the greater-average-improvement prong, the modeling indicates that CAIR emissions reductions in the East produce significantly greater visibility improvements than source-specific BART. Specifically, for the 29 Eastern Class I areas analyzed, the average visibility improvement, on the 20 percent worst days, expected solely as a result of the CAIR applied in the East and BART applied in the West is 1.6 dv, as compared to the average degree of improvement predicted for nationwide source-specific BART of 0.7 dv. Similarly, on a national basis, the visibility modeling showed that for all 116 Class I areas evaluated, the average visibility improvement, on the 20 percent worst days, in 2015 was 0.5 dv under the CAIR cap and trade program in the East and BART in the West, but only 0.2 deciviews under the nationwide source-specific BART approach.

The modeling showed similar results for the 20 percent best visibility days, although there is less visibility improvement on the best days compared to the worst days. For the 29 Eastern Class I areas analyzed, the average visibility improvement, on the 20 percent best days, expected solely as result of the CAIR applied in the East and BART applied in the West is 0.4 dv, as compared to the average degree of

[160] Because the presumptive controls in the BART guidelines are applicable to coal-fired EGUs, the BART analysis does not assume controls on oil- and gas-fired units. However, NO_X emissions from all (not just BART-eligible) oil and gas steam plants and simple cycle turbines in the CAIR region in the 2010 base case are projected to be about 40,000 tons, or less than 1.5% of the projected total 2010 EGU emissions. By comparison, the modeling of the scenario of the CAIR (with BART in the non-CAIR region) resulted in 640,000 tons of NO_X per year less than the projected emissions under a nationwide BART scenario. Therefore, even if the 40,000 tons of NO_X emissions from oil and gas EGUs were reduced to zero under the BART scenario, the CAIR will still produce significantly greater emission reductions than BART. Also, not all of the oil and gas units associated with those 40,000 tons would be eligible for BART. The IPM does not predict any difference in SO_2 emissions from oil or gas-fired units between the CAIR and BART.

[161] See "Memo From Perrin Quarles Associates, Inc. Re Follow-Up on Units Potentially Affected by BART, July 19, 2004," as Appendix A to the "Better than BART" TSD.

[162] Some Class I areas do not have IMPROVE monitors and are represented by nearby IMPROVE sites.

[163] This is the number of IMPROVE sites that are located at or represent Class I areas. There are additional IMPROVE protocol monitoring sites that are not located at Class I areas.

[164] There are 5 Class I areas in the East and 33 Class I areas in the West (outside of the CAIR control region) that do not have complete IMPROVE data for 2001.

[165] "Demonstration that CAIR Satisfies the 'Better-than-BART' Test As Proposed in the Guidelines for Making BART Determinations," March, 2005.

[166] See Better-than-BART TSD for results at each Class I Area.

improvement predicted for nationwide source-specific BART of 0.2 dv. On a national basis, the visibility modeling showed that for all 116 class I areas evaluated, the average visibility improvement, on the 20 percent best days, in 2015 was 0.1 dv under both the CAIR cap and trade program in the East and BART in the West, and under the nationwide source-specific BART approach. The results are summarized in table IX–1.

TABLE IX–1.—AVERAGE VISIBILITY IMPROVEMENT IN 2015 VS. 2015 Base Case (deciviews)

Class I Areas	CAIR + BART in West		Nationwide BART	
	East [167]	National	East	National
20% Worst Days	1.6	0.5	0.7	0.2
20% Best Days	0.4	0.1	0.2	0.1

The results clearly indicate that the CAIR will achieve greater reasonable progress than BART as proposed, measured by the proposed better-than-BART test. At this time, we can foresee no circumstances under which BART for EGUs could produce greater visibility improvement than the CAIR. However, for the reasons noted in section IX.C.1. above, we are deferring a final determination of whether the CAIR makes greater reasonable progress than BART until the BART guidelines for EGUs and the criteria for BART-alternative programs are finalized.

D. How Will EPA Handle State Petitions Under Section 126 of the CAA?

Section 126 of the CAA authorizes a downwind State to petition EPA for a finding that any new (or modified) or existing major stationary source or group of stationary sources upwind of the State emits or would emit in violation of the prohibition of section 110(a)(2)(D)(i) because their emissions contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in the State. If EPA makes such a finding, EPA is authorized to directly regulate the affected sources. Section 126 relies on the same statutory provision that underlies the CAIR.

In the January 30, 2004 CAIR proposal, EPA set forth its general view of the approach it expected to take in responding to any section 126 petition that might be submitted which relies on essentially the same record as the CAIR. That approach is the one EPA used in addressing section 126 petitions that were submitted to EPA in 1997 while EPA was developing the NO_X SIP Call to control ozone transport. In the NO_X SIP Call rule, we determined under section 110(a)(2)(D) that the SIP for each affected State (and the District of Columbia) must be revised to eliminate the amount of emissions that contributes significantly to nonattainment in downwind States. The emissions reductions requirement was based on the quantity of emissions that could be eliminated by the application of highly cost-effective controls on specified sources in that State. In May 1999, shortly after promulgation of the NO_X SIP Call, EPA took final action on the section 126 petitions (64 FR 28250; May 25, 1999). The Section 126 action relied on essentially the same record as the NO_X SIP Call. In addition, we established a section 126 remedy based on the same set of highly cost-effective controls. In the May 1999 Section 126 Rule, we determined which petitions had technical merit, but we stopped short of granting the findings for the petitions. Instead, we stated that because we had promulgated the NO_X SIP Call—a transport rule under section 110(a)(2)(D)—as long as an upwind State remained on track to comply with that rule, EPA would defer making the section 126 findings. The findings would be triggered at either of two future dates if specified progress had not been made by those times. The Section 126 Rule included a provision under which the rule would be automatically withdrawn for sources in a State once that State submitted and EPA fully approved a SIP that complied with the NO_X SIP Call. (See 64 FR 28271–28274; May 25, 1999.) The reason for this withdrawal would be the fact that the affected State's SIP revision would fulfill the section 110(a)(2)(D) requirements, so that there would no longer be any basis for the section 126 finding with respect to that State. In this manner, the NO_X SIP Call and the Section 126 Rules would be harmonized.

Under the CAIR proposal, EPA received comments regarding its intended approach for acting on any future section 126 petitions that might be filed. Many commenters expressed support for the approach that EPA had outlined. Other commenters raised issues regarding the timing of emissions reductions under a new section 126 action. Some pointed out that the CAIR compliance date would be later than the 3 years allowed for compliance under section 126. Some were concerned that the proposed CAIR compliance date is later than many attainment dates and States may need section 126 petitions in order to get earlier upwind reductions in order to meet their attainment dates. Some questioned the legal basis for linking the two rules. Several commenters expressed concern that EPA would be restricting the use of or weakening the section 126 provision. A number of commenters urged EPA not to prejudge any petition, but to evaluate each on its own merit. Some thought that any petitions submitted prior to designations or before States had had the opportunity to prepare SIPs would be premature and should be denied. Others suggested that CAIR might not solve all the transport problems and that States would need to retain the section 126 tool to seek further reductions.

After issuing the CAIR proposal, EPA received, on March 19, 2004, a section 126 petition from North Carolina seeking reductions in upwind NO_X and SO_2 for purposes of reducing $PM_{2.5}$ and 8-hour ozone levels in North Carolina. The petition relies in large part on the technical record for the proposed CAIR.

When we propose action on the North Carolina petition, we will set forth our view of the interaction between section 110(a)(2)(D) and section 126. In that proposal, we will take into consideration and respond to the section 126-related comments we received on the CAIR. The EPA will provide a comment period and opportunity for a public hearing on the specifics of that section 126 proposal, including an opportunity to comment on our view of the interaction of the 2 statutory provisions.

[167] Eastern Class I areas are those in the CAIR affected states, except areas in west Texas which are considered western and therefore included in the national average, plus those in New England.

E. Will Sources Subject to CAIR Also Be Subject to New Source Review?

The EPA did not propose any provisions in the CAIR related to new source review (NSR). Nonetheless, we received some comments on the relationship between CAIR and the NSR provisions that may apply to emissions sources also impacted by the CAIR. Many commenters indicated that if an EGU is part of an EPA-administered regional cap and trade program for NO_X and SO_2, then that EGU should be exempted from NSR for the covered pollutants. The commenters cited Clear Skies legislation as containing provisions affecting NSR for covered sources. In this final rule, EPA is not addressing or revising the provisions of NSR.

It should be noted that pollution control measures implemented by EGUs in compliance with the CAIR may be eligible for an exemption under the NSR pollution control project provision.[168] These provisions provide an exemption from major NSR for controls such as selective catalytic reduction (SCR) for NO_X control and wet scrubbers for SO_2 control, provided that certain conditions identified in the provisions are met.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In view of its important policy implications and potential effect on the economy of over $100 million, this action has been judged to be an economically "significant regulatory action" within the meaning of the Executive Order. As a result, today's action was submitted to OMB for review, and EPA has prepared an economic analysis of the rule entitled "Regulatory Impact Analysis of the Final Clean Air Interstate Rule" (March 2005).

1. What Economic Analyses Were Conducted for the Rulemaking?

The analyses conducted for this final rule provide several important analyses of impacts on public welfare. These include an analysis of the social benefits, social costs, and net benefits of the regulatory scenario. The economic analyses also address issues involving small business impacts, unfunded mandates (including impacts for Tribal governments), environmental justice, children's health, energy impacts, and requirements of the Paperwork Reduction Act (PRA).

2. What Are the Benefits and Costs of This Rule?

The benefit-cost analysis shows that substantial net economic benefits to society are likely to be achieved due to reductions in emissions resulting from this rule. The results detailed below show that this rule would be highly beneficial to society, with annual net benefits (benefits less costs) of approximately $71.4 or $60.4 billion in 2010 and $98.5 or $83.2 billion in 2015. These alternative net benefits estimates occur due to differing assumptions concerning the social discount rate used to estimate the annual value of the benefits and costs of the rule with the lower estimates relating to a discount rate of 7 percent and the higher estimates a discount rate of 3 percent. All amounts are reflected in 1999 dollars.

The benefits and costs reported for the CAIR represent estimates for the final CAIR program that includes the CAIR promulgated rule and the concurrent proposal to include annual SO_2 and NO_X controls for New Jersey and Delaware. The modeling used to provide these estimates also assumes annual SO_2 and NO_X controls for Arkansas that are not a part of the final CAIR program resulting in a slight overstatement of the reported benefits and costs.

a. Control Scenario

Today's rule sets forth requirements for States to eliminate their significant contribution to down-wind nonattainment of the ozone and $PM_{2.5}$ NAAQS. In order to reduce this significant contribution, EPA requires that certain States reduce their emissions of SO_2 and NO_X. The EPA derived the quantities by calculating the amount of SO_2 and NO_X emissions that EPA believes can be controlled from the electric power industry in a highly cost-effective manner. The EPA considered all promulgated CAA requirements and known State actions in the baseline used to develop the estimates of benefits and costs for this rule. For a more complete description of the reduction requirements and how they were calculated, see section IV of today's rulemaking.

Although States may choose to obtain the emissions reductions from other source categories, for purposes of analyzing the impacts of the rule, EPA is assuming the application of the controls that it has identified to be highly cost effective on all EGUs in the transport region.

b. Cost Analysis and Economic Impacts

For the affected region, the projected annual private incremental costs of the CAIR to the power industry are $2.4 billion in 2010 and $3.6 billion in 2015. These costs represent the private compliance cost to the electric generating industry of reducing NO_X and SO_2 emissions to meet the caps set forth in the rule. Estimates are in 1999 dollars.

In estimating the net benefits of regulation, the appropriate cost measure is "social costs." Social costs represent the welfare costs of the rule to society. These costs do not consider transfer payments (such as taxes) that are simply redistributions of wealth. The social costs of this rule are estimated to be approximately $1.9 billion in 2010 and $2.6 billion in 2015 assuming a 3 percent discount rate. These costs become $2.1 billion in 2010 and $3.1 billion in 2015 assuming a 7 percent discount rate.

Overall, the impacts of the CAIR are modest, particularly in light of the large benefits we expect. Ultimately, we believe the industry will pass along most of the costs of the rule to consumers, so that the costs of the rule will largely fall upon the consumers of electricity. Retail electricity prices are projected to increase roughly 2.0–2.7 percent with the CAIR in the 2010 and 2015 timeframe, and then drop below the 2.0 percent increase level thereafter. The effects of the CAIR on natural gas prices and the power-sector generation mix are relatively small, with a 1.6 percent or less increase in natural gas prices projected from 2010 to 2020.

[168] See 40 CFR 51.165(a)(1)(xxv) and 51.165(e), 40 CFR 51.166(b)(31) and 51.166(v), and 40 CFR 51.21(b)(32) and 52.21(z).

There will be continued reliance on coal-fired generation, that is projected to remain at roughly 50 percent of total electricity generated. A relatively small amount of coal-fired capacity, about 5.3 GW (1.7 percent of all coal-fired capacity and 0.5 percent of all generating capacity), is projected to be uneconomic to maintain. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region. Units projected to be uneconomic to maintain may be "mothballed," retired, or kept in service to ensure transmission reliability in certain parts of the grid. The EPA's analysis does not address these choices.

As demand grows in the future, additional coal-fired generation is projected to be built under the CAIR. As a result, coal production for electricity generation is projected to increase from 2003 levels by about 15 percent in 2010 and 25 percent by 2020, and we expect a small shift towards greater coal production in Appalachia and the interior coal regions of the country with the CAIR.

For today's rule, EPA analyzed the costs using the Integrated Planning Model (IPM). The IPM is a dynamic linear programming model that can be used to examine the economic impacts of air pollution control policies for SO_2 and NO_X throughout the contiguous U.S. for the entire power system. Documentation for IPM can be found in the docket for this rulemaking or at *http://www.epa.gov/airmarkets/epa-ipm.*

c. Human Health Benefit Analysis

Our analysis of the health and welfare benefits anticipated from this rule are presented in this section. Briefly, the analysis projects major benefits from implementation of the rule in 2010 and 2015. As described below, thousands of deaths and other serious health effects would be prevented. We are able to monetize annual benefits of approximately $73.3 or $62.6 billion in 2010 (based upon a 3 percent or 7 percent discount rate, respectively) and $101 billion or $86.3 billion in 2015 (based upon a discount rate of 3 percent or 7 percent, respectively, 1999 dollars).

Table X–1 presents the primary estimates of reduced incidence of PM- and ozone-related health effects for the years 2010 and 2015 for the regulatory control strategy. In 2015, we estimate that PM-related annual benefits include approximately 17,000 fewer premature fatalities, 8,700 fewer cases of chronic bronchitis, 22,000 fewer non-fatal heart attacks, 10,500 fewer hospitalizations (for respiratory and cardiovascular disease combined) and result in significant reductions in days of restricted activity due to respiratory illness (with an estimate of 9.9 million fewer cases) and approximately 1,700,000 fewer work-loss days. We also estimate substantial health improvements for children from reduced upper and lower respiratory illness, acute bronchitis, and asthma attacks.

Ozone health-related benefits are expected to occur during the summer ozone season (usually ranging from May to September in the Eastern U.S.). Based upon modeling for 2015, annual ozone-related health benefits are expected to include 2,800 fewer hospital admissions for respiratory illnesses, 280 fewer emergency room admissions for asthma, 690,000 fewer days with restricted activity levels, and 510,000 fewer days where children are absent from school due to illnesses.

While we did not include in our primary benefits analysis separate estimates of the number of premature deaths that would be avoided due to reductions in ozone levels, recent studies suggest a link between short-term ozone exposures with premature mortality independent of PM exposures. Based upon a recent report by Thurston and Ito, (2001),[169] the EPA Science Advisory Board has recommended that EPA reevaluate the ozone mortality literature for possible inclusion of ozone mortality in the estimate of total benefits. More recently, a comprehensive analysis using data from the National Morbidity, Mortality and Air Pollution Study (NMMAPS) found a significant association between daily ozone levels and daily mortality rates (Bell *et al.* 2004).[170] The analysis estimated a 0.5 percent increase in daily mortality associated with a 10 ppb increase in ozone, based on data from 95 major urban areas. Using a similar magnitude effect estimate, sensitivity analysis estimates suggest that in 2015, the CAIR would result in an additional 500 fewer premature deaths annually due to reductions in daily ambient ozone concentrations. The EPA has sponsored three independent meta-analyses of the ozone mortality epidemiology literature to inform a determination on inclusion of this important health impact in the primary benefits analysis for future regulations.

Table X–2 presents the estimated monetary value of reductions in the incidence of health and welfare effects. Annual PM-related and ozone-related health benefits are estimated to be approximately $72.1 or $61.4 billion in 2010 (3 percent and 7 percent discount rate, respectively) and $99.3 or $84.5 billion in 2015 (3 percent or 7 percent discount rate, respectively). Estimated annual visibility benefits in southeastern Class I areas are approximately $1.14 billion in 2010 and $1.78 billion in 2015. All monetized estimates are stated in 1999$. These estimates account for growth in real gross domestic product (GDP) per capita between the present and the years 2010 and 2015. As the table indicates, total benefits are driven primarily by the reduction in premature fatalities each year, that accounts for over 90 percent of total benefits.

Table X–3 presents the total monetized net benefits for the years 2010 and 2015. This table also indicates with a "B" those additional health and environmental benefits of the rule that we were unable to quantify or monetize. These effects are additive to the estimate of total benefits. A listing of the benefit categories that could not be quantified or monetized in our benefit estimates are provided in Table X–4. We are not able to estimate the magnitude of these unquantified and unmonetized benefits. While EPA believes there is considerable value to the public for the PM-related benefit categories that could not be monetized, we believe these benefits may be small relative to those categories we were able to quantify and monetize. In contrast, EPA believes the monetary value of the ozone-related premature mortality benefits could be substantial. As previously discussed, we estimate that ozone mortality benefits may yield as many as 500 reduced premature mortalities per year and may increase the benefits of CAIR by approximately $3 billion annually.

d. Quantified and Monetized Welfare Benefits

Only a subset of the expected visibility benefits—those for Class I areas in the southeastern U.S. are included in the monetary benefits estimates we project for this rule. We believe the benefits associated with these non-health benefit categories are likely significant. For example, we are able to quantify significant visibility improvements in Class I areas in the Northeast and Midwest, but are unable at present to place a monetary value on these improvements. Similarly, we

[169] Thurston, G.D. and K. Ito. 2001. "Epidemiological Studies of Acute Ozone Exposures and Mortality". *J. Expo Anal Environ Epidemiology* 11 (4) :286–294.

[170] Bell, M.L., A. McDermott, S. Zeger, J. Samet, F. Dominichi. 2005. "Ozone and Mortality in 95 U.S. Urban Communities from 1987 to 2000." *Journal of the American Medical Association.* Forthcoming.

anticipate improvement in visibility in residential areas where people live, work and recreate within the CAIR region for which we are currently unable to monetize benefits. For the Class I areas in the southeastern U.S., we estimate annual benefits of $1.78 billion beginning in 2015 for visibility improvements. The value of visibility benefits in areas where we were unable to monetize benefits could also be substantial.

We also quantify nitrogen and sulfur deposition reductions expected to occur as a result of the CAIR and discuss potential benefits from these reductions in section X.A.4 of this preamble. While we are unable to estimate a dollar value associated with these benefits, we are able to quantify acidification improvements in lakes in the Northeast including the Adirondacks and potential benefits of reductions in nitrogen deposition to estuaries such as the Chesapeake Bay.

TABLE X–1.—ESTIMATED ANNUAL REDUCTIONS IN INCIDENCE OF HEALTH EFFECTS [a]

Health Effect	2010 annual incidence reduction	2015 annual incidence reduction
PM–Related endpoints		
Premature Mortality [b, c].		
Adult, age 30 and over	13,000	17,000
Infant, age <1 year	29	36
Chronic bronchitis (adult, age 26 and over)	6,900	8,700
Non-fatal myocardial infarction (adult, age 18 and over)	17,000	22,000
Hospital admissions—respiratory (all ages) [d]	4,300	5,500
Hospital admissions—cardiovascular (adults, age >18) [e]	3,800	5,000
Emergency room visits for asthma (age 18 years and younger)	10,000	13,000
Acute bronchitis, (children, age 8–12)	16,000	19,000
Lower respiratory symptoms (children, age 7–14)	190,000	230,000
Upper respiratory symptoms (asthmatic children, age 9–18)	150,000	180,000
Asthma exacerbation (asthmatic children, age 6–18)	240,000	290,000
Work Loss Days	1,400,000	1,700,000
Minor restricted activity days (adults age 18–65)	8,100,000	9,900,000
Ozone-Related endpoints		
Hospital admissions—respiratory causes (adult, 65 and older) [f]	610	1,700
Hospital admissions—respiratory causes (children, under 2)	380	1,100
Emergency room visit for asthma (all ages)	100	280
Minor restricted activity days (adults, age 18–65)	280,000	690,000
School absence days	180,000	510,000

[a] Incidences are rounded to two significant digits. These estimates represent benefits from the CAIR nationwide. The modeling used to derive these incidence estimates are reflective of those expected for the final CAIR program including the CAIR promulgated rule and the proposal to include annual SO_2 and NO_X controls for New Jersey and Delaware. Modeling used to develop these estimates assumes annual SO_2 and NO_X controls for Arkansas resulting in a slight overstatement of the reported benefits and costs for the complete CAIR program.

[b] Premature mortality benefits associated with ozone are not analyzed in the primary analysis.

[c] Adult mortality based upon studies by Pope, *et al.* 2002.[171] Infant mortality based upon studies by Woodruff, Grillo, and Schoendorf,1997.[172]

[d] Respiratory hospital admissions for PM include admissions for chronic obstructive pulmonary disease (COPD), pneumonia and asthma.

[e] Cardiovascular hospital admissions for PM include total cardiovascular and subcategories for ischemic heart disease, dysrhythmias, and heart failure.

[f] Respiratory hospital admissions for ozone include admissions for all respiratory causes and subcategories for COPD and pneumonia.

TABLE X–2.—ESTIMATED ANNUAL MONETARY VALUE OF REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS

[Millions of 1999$] [a, b]

Health effect	Pollutant	2010 estimated value of reductions	2015 estimated value of reductions
Premature mortality [c, d]			
Adult >30 years			
3 percent discount rate	$PM_{2.5}$	$67,300	$92,800
7 percent discount rate		56,600	78,100
Child <1 year		168	222
Chronic bronchitis (adults, 26 and over)	$PM_{2.5}$	2,520	3,340
Non-fatal acute myocardial infarctions			
3 percent discount rate	$PM_{2.5}$	1,420	1,850
7 percent discount rate		1,370	1,790

[171] Pope, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, and G.D. Thurston. 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution." *Journal of American Medical Association* 287:1132–1141.

[172] Woodruff, T.J., J. Grillo, and K.C. Schoendorf. 1997. "The Relationship Between Selected Causes of Postneonatal Infant Mortality and Particulate Infant Mortality and Particulate Air Pollution in the United States." *Environmental Health Perspectives* 105(6):608–612.

[173] U.S. Environmental Protection Agency, 2000. Guidelines for Preparing Economic Analyses. *www.yosemite1.epa.gov/ee/epa/eed/hsf/pages/Guideline.html*. Office of Management and Budget, The Executive Office of the President, 2003. Circular A–4. *http://www.whitehouse.gov/omb/circulars*.

TABLE X–2.—ESTIMATED ANNUAL MONETARY VALUE OF REDUCTIONS IN INCIDENCE OF HEALTH AND WELFARE EFFECTS—Continued

[Millions of 1999$] [a, b]

Health effect	Pollutant	2010 estimated value of reductions	2015 estimated value of reductions
Hospital admissions for respiratory causes	$PM_{2.5}$, O3	45.2	78.9
Hospital admissions for cardiovascular causes	$PM_{2.5}$	80.7	105
Emergency room visits for asthma	$PM_{2.5}$, O3	2.84	3.56
Acute bronchitis (children, age 8–12)	$PM_{2.5}$	5.63	7.06
Lower respiratory symptoms (children, age 7–14)	$PM_{2.5}$	2.98	3.74
Upper respiratory symptoms (asthma, age 9–11)	$PM_{2.5}$	3.80	4.77
Asthma exacerbations	$PM_{2.5}$	10.3	12.7
Work loss days	$PM_{2.5}$,	180	219
Minor restricted activity days (MRADs)	$PM_{2.5}$, O3	422	543
School absence days	O3	12.9	36.4
Worker productivity (outdoor workers, age 18–65)	O3	7.66	19.9
Recreational visibility, 81 Class I areas	$PM_{2.5}$	1,140	1,780
Monetized Total [c]			
Base estimate			
3 percent discount rate	$PM_{2.5}$, O3	73,300 + B	101,000 + B
7 percent discount rate		62,600 + B	86,300 + B

[a] Monetary benefits are rounded to three significant digits. These estimates represent benefits from the CAIR nationwide for NO_X and SO_2 emissions reductions from electricity-generating units sources (with the exception of ozone and visibility benefits). Ozone benefits relate to the eastern United States. Visibility benefits relate to Class I areas in the southeastern United States. The benefit estimates reflected relate to the final CAIR program that includes the CAIR promulgated rule and the proposal to include annual SO_2 and NO_X controls for New Jersey and Delaware. Modeling used to develop these estimates assumes annual SO_2 and NO_X controls for Arkansas resulting in a slight overstatement of the reported benefits and costs for the complete CAIR program.

[b] Monetary benefits adjusted to account for growth in real GDP per capita between 1990 and the analysis year (2010 or 2015).

[c] Valuation assumes discounting over the SAB recommended 20 year segmented lag structure described in the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005). Results show 3 percent and 7 percent discount rates consistent with EPA and OMB guidelines for preparing economic analyses (US EPA, 2000 and OMB, 2003).[173]

[d] Adult mortality based upon studies by Pope *et al.* 2002. Infant mortality based upon studies by Woodruff, Grillo, and Schoendorf, 1997.

[e] B represents the monetary value of health and welfare benefits not monetized. A detailed listing is provided in Table X–4.

3. How Do the Benefits Compare to the Costs of This Final Rule?

The estimated annual private costs to implement the emission reduction requirements of the final rule for the CAIR region are $2.36 in 2010 and $3.57 billion in 2015 (1999$). These costs are the annual incremental electric generation production costs that are expected to occur with the CAIR. The EPA uses these costs as compliance cost estimates in developing cost-effectiveness estimates.

In estimating the net benefits of regulation, the appropriate cost measure is "social costs." Social costs represent the welfare costs of the rule to society. These costs do not consider transfer payments (such as taxes) that are simply redistributions of wealth. The social costs of this rule are estimated to be approximately $1.9 billion in 2010 and $2.6 billion in 2015 assuming a 3 percent discount rate. These costs become $2.1 billion in 2010 and $3.1 billion in 2015, if one assumes a 7 percent discount rate. Thus, the net benefit (social benefits minus social costs) of the program is approximately $71.4 + B billion or $60.4 + B billion (3 percent and 7 percent discount rate, respectively) annually in 2010 and $98.5 + B billion or $83.2 + B billion annually (3 percent and 7 percent discount rate, respectively) in 2015. Implementation of the rule is expected to provide society with a substantial net gain in social welfare based on economic efficiency criteria.

The annualized regional cost of the CAIR, as quantified here, is EPA's best assessment of the cost of implementing the CAIR, assuming that States adopt the model cap and trade program. These costs are generated from rigorous economic modeling of changes in the power sector due to the CAIR. This type of analysis using IPM has undergone peer review and been upheld in Federal courts. The direct cost includes, but is not limited to, capital investments in pollution controls, operating expenses of the pollution controls, investments in new generating sources, and additional fuel expenditures. The EPA believes that these costs reflect, as closely as possible, the additional costs of the CAIR to industry. The relatively small cost associated with monitoring emissions, reporting, and recordkeeping for affected sources is not included in these annualized cost estimates, but EPA has done a separate analysis and estimated the cost to less than $42 million (see section X. B., Paperwork Reduction Act). However, there may exist certain costs that EPA has not quantified in these estimates. These costs may include costs of transitioning to the CAIR, such as the costs associated with the retirement of smaller or less efficient EGUs, employment shifts as workers are retrained at the same company or re-employed elsewhere in the economy, and certain relatively small permitting costs associated with title IV that new program entrants face. Costs may be understated since an optimization model was employed that assumes cost minimization, and the regulated community may not react in the same manner to comply with the rules. Although EPA has not quantified these costs, the Agency believes that they are small compared to the quantified costs of the program on the power sector. The annualized cost estimates presented are the best and most accurate based upon available information. In a separate analysis, EPA estimates the indirect costs and impacts of higher electricity prices on the entire economy [see Regulatory Impact Analysis for the Final Clean Air Interstate Rule, Appendix E (March 2005)].

The costs presented here are EPA's best estimate of the direct private costs of the CAIR. For purposes of benefit-cost analysis of this rule, EPA has also estimated the additional costs of the CAIR using alternate discount rates for calculating the social costs, parallel to the range of discount rates used in the estimates of the benefits of the CAIR (3 percent and 7 percent). Using these alternate discount rates, the social costs of the CAIR are $1.9 billion in 2010 and $2.6 billion in 2015 using a discount rate of 3 percent, and $2.1 billion in 2010 and $3.1 billion in 2015 using a discount rate of 7 percent. The costs of the CAIR using the adjusted discount rates are lower than the private costs of the CAIR generated using IPM because the social costs do not include certain transfer payments, primarily taxes, that are considered a redistribution of wealth rather than a social cost.[174]

TABLE X–3.—SUMMARY OF ANNUAL BENEFITS, COSTS, AND NET BENEFITS OF THE CLEAN AIR INTERSTATE RULE [a]

[Billions of 1999 dollars]

Description	2010 (Billions of 1999 dollars)	2015 (Billions of 1999 dollars)
Social Costs: [b]		
3 percent discount rate	$1.91	$2.56
7 percent discount rate	2.14	3.07
Social Benefits: [c,d,e]		
3 percent discount rate	73.3 + B	101 + B
7 percent discount rate	62.6 + B	86.3 + B
Health-related benefits:		
3 percent discount rate	72.1 + B	99.3 + B
7 percent discount rate	61.4 + B	84.5 + B
Visibility benefits	1.14 + B	1.78 + B
Annual Net Benefits (Benefits-Costs): [e,f]		
3 percent discount rate	71.4 + B	98.5 + B
7 percent discount rate	60.4 + B	83.2 + B

[a] All estimates are rounded to three significant digits and represent annualized benefits and costs anticipated for the years 2010 and 2015. Estimates relate to the complete CAIR program including the CAIR promulgated rule and the proposal to include annual SO_2 and NO_X controls for New Jersey and Delaware. Modeling used to develop these estimates assumes annual SO_2 and NO_X controls for Arkansas resulting in a slight overstatement of the reported benefits and costs for the complete CAIR program.

[b] Note that costs are the annual total costs of reducing pollutants including NO_X and SO_2 in the CAIR region.

[c] As this table indicates, total benefits are driven primarily by PM-related health benefits. The reduction in premature fatalities each year accounts for over 90 percent of total monetized benefits in 2015. Benefits in this table are nationwide (with the exception of ozone and visibility) and are associated with NO_X and SO_2 reductions for the EGU source category. Ozone benefits represent benefits in the eastern United States. Visibility benefits represent benefits in Class I areas in the southeastern United States.

[d] Not all possible benefits or disbenefits are quantified and monetized in this analysis. B is the sum of all unquantified benefits and disbenefits. Potential benefit categories that have not been quantified and monetized are listed in Table X–4.

[e] Valuation assumes discounting over the SAB-recommended 20 year segmented lag structure described in chapter 4 of the Regulatory Impact Analysis for the Clean Air Interstate Rule (March 2005). Results reflect 3 percent and 7 percent discount rates consistent with EPA and OMB guidelines for preparing economic analyses (U.S. EPA, 2000 and OMB, 2003).[174]

[f] Net benefits are rounded to the nearest $100 million. Columnar totals may not sum due to rounding.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Gaps in the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects. Gaps in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes that can be quantified. While uncertainties in the underlying scientific and economics literatures (that may result in overestimation or underestimation of benefits) are discussed in detail in the economic analyses and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of this rule include the following:

- EPA's inability to quantify potentially significant benefit categories;
- Uncertainties in population growth and baseline incidence rates;
- Uncertainties in projection of emissions inventories and air quality into the future;
- Uncertainty in the estimated relationships of health and welfare effects to changes in pollutant concentrations including the shape of the C–R function, the size of the effect estimates, and the relative toxicity of the many components of the PM mixture;
- Uncertainties in exposure estimation; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the rulemaking in future years under a set of reasonable assumptions.

In valuing reductions in premature fatalities associated with PM, we used a value of $5.5 million per statistical life. This represents a central value consistent with a range of values from $1 to $10 million suggested by recent meta-analyses of the wage-risk value of statistical life (VSL) literature.[175]

The benefits estimates generated for this rule are subject to a number of assumptions and uncertainties, that are discussed throughout the Regulatory Impact Analysis document [Regulatory

[174] United States Environmental Protection Agency, 2000. Guidelines for Preparing Economic Analyses. *www.yosemitel.epa.gov/ee/epa/eed/hsf/pages/Guideline.html*. Office of Management and Budget, The Executive Office of the President, 2003. Circular A–4. *http://www.whitehouse.gov/omb/circulars*.

[175] Mrozek, J.R. and L.O. Taylor, *What determines the value of a life? A Meta Analysis*, Journal of Policy Analysis and Management 21(2), pp. 253–270.

Impact Analysis for the Final Clean Air Interstate Rule (March 2005)]. As Table X–2 indicates, total benefits are driven primarily by the reduction in premature fatalities each year. Elaborating on the previous uncertainty discussion, some key assumptions underlying the primary estimate for the premature mortality category include the following:

(1) EPA assumes inhalation of fine particles is causally associated with premature death at concentrations near those experienced by most Americans on a daily basis. Plausible biological mechanisms for this effect have been hypothesized for the endpoints included in the primary analysis and the weight of the available epidemiological evidence supports an assumption of causality.

(2) EPA assumes all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality. This is an important assumption, because the proportion of certain components in the PM mixture produced via precursors emitted from EGUs may differ significantly from direct PM released from automotive engines and other industrial sources, but no clear scientific grounds exist for supporting differential effects estimates by particle type.

(3) EPA assumes the C–R function for fine particles is approximately linear within the range of ambient concentrations under consideration. In the PM Criteria Document, EPA recognizes that for individuals and specific health responses there are likely threshold levels, but there remains little evidence of thresholds for PM-related effects in populations.[176] Where potential threshold levels have been suggested, they are at fairly low levels with increasing uncertainty about effects at lower ends of the $PM_{2.5}$ concentration ranges. Thus, EPA estimates include health benefits from reducing the fine particles in areas with varied concentrations of PM, including both regions that are in attainment with fine particle standard and those that do not meet the standard.

The EPA recognizes the difficulties, assumptions, and inherent uncertainties in the overall enterprise. The analyses upon which the CAIR is based were selected from the peer-reviewed scientific literature. We used up-to-date assessment tools, and we believe the results are highly useful in assessing this rule.

[176] U.S. EPA. (2004). Air Quality Criteria for Particulate Matter. Research Triangle Park, NC: National Center for Environmental Assessment—RTP Office; Report No. EPA/600/P–99/002aD.

There are a number of health and environmental effects that we were unable to quantify or monetize. A complete benefit-cost analysis of the CAIR requires consideration of all benefits and costs expected to result from the rule, not just those benefits and costs which could be expressed here in dollar terms. A listing of the benefit categories that were not quantified or monetized in our estimate are provided in Table X–4. These effects are denoted by "B" in Table X–3 above, and are additive to the estimates of benefits.

4. What Are the Unquantified and Unmonetized Benefits of the CAIR Emissions Reductions?

Important benefits beyond the human health and welfare benefits resulting from reductions in ambient levels of $PM_{2.5}$ and ozone are expected to occur from this rule. These other benefits occur both directly from NO_X and SO_2 emissions reductions, and indirectly through reductions in co-pollutants such as mercury. These benefits are listed in Table X–4. Some of the more important examples include: Reductions in NO_X and SO_2 emissions required by the CAIR will reduce acidification and, in the case of NO_X, eutrophication of water bodies. Reduced nitrate contamination of drinking water is another possible benefit of the rule. This final rule will also reduce acid and particulate deposition that cause damages to cultural monuments, as well as, soiling and other materials damage.

To illustrate the important nature of benefit categories we are currently unable to monetize, we discuss two categories of public welfare and environmental impacts related to reductions in emissions required by the CAIR: Reduced acid deposition and reduced eutrophication of water bodies.

a. What Are the Benefits of Reduced Deposition of Sulfur and Nitrogen to Aquatic, Forest, and Coastal Ecosystems?

Atmospheric deposition of sulfur and nitrogen, more commonly known as acid rain, occurs when emissions of SO_2 and NO_X react in the atmosphere (with water, oxygen, and oxidants) to form various acidic compounds. These acidic compounds fall to earth in either a wet form (rain, snow, and fog) or a dry form (gases and particles). Prevailing winds can transport acidic compounds hundreds of miles, across State borders. Acidic compounds (including small particles such as sulfates and nitrates) cause many negative environmental effects, including acidification of lakes and streams, harm to sensitive forests, and harm to sensitive coastal ecosystems.

i. Acid Deposition and Acidification of Lakes and Streams

The extent of adverse effects of acid deposition on freshwater and forest ecosystems depends largely upon the ecosystem's ability to neutralize the acid. The neutralizing ability [key indicator is termed Acid Neutralizing Capacity (ANC)] depends largely on the watershed's physical characteristics: Geology, soils, and size. Waters that are sensitive to acidification tend to be located in small watersheds that have few alkaline minerals and shallow soils. Conversely, watersheds that contain alkaline minerals, such as limestone, tend to have waters with a high ANC. Areas especially sensitive to acidification include portions of the Northeast (particularly, the Adirondack and Catskill Mountains, portions of New England, and streams in the mid-Appalachian highlands) and southeastern streams.

Some of the impacts of today's rulemaking on acidification of water bodies have been quantified. In particular, this rule will result in improvements in the acid buffering capacity for lakes in the Northeast and Adirondack Mountains. Specifically, 12 percent of Adirondack lakes are projected to be chronically acidic in the base case. However, we project that the CAIR rule will eliminate chronic acidification in lakes in the Adirondack Mountains by 2030. In addition, today's rule is expected to decrease the percentage of chronically acidic lakes throughout Northeast from 6 to 1 percent. However, some lakes in the Adirondacks and New England will continue to experience episodic acidification even after implementation of this rule.

In a recent study,[177] Resources for the Future (RFF) estimates total benefits (*i.e.*, the sum of use and nonuse values) of natural resource improvements for the Adirondacks resulting from a program that would reduce acidification in 40 percent of the lakes in the Adirondacks that were of concern for acidification. While this study requires further evaluation, the RFF study suggests that the benefits of acid deposition reductions for the CAIR are likely to be substantial in terms of the total monetized value for ecological endpoints (although likely small in

[177] Banzhaf, Spencer, Dallas Burtraw, David Evans, and Alan Krupnick. "Valuation of Natural Resource Improvements in the Adirondacks," Resources for the Future (RFF), September 2004.

comparison to the estimated premature mortality benefits estimates).

ii. Acid Deposition and Forest Ecosystem Impacts

Current understanding of the effects of acid deposition on forest ecosystems focuses on the effects of ecological processes affecting plant uptake, retention, and cycling of nutrients within forest ecosystems. Recent studies indicate that acid deposition is at least partially responsible for decreases in base cations (calcium, magnesium, potassium, and others) from soils in the northeastern and southeastern United States. Losses of calcium from forest soils and forested watersheds have now been documented as a sensitive early indicator of soil response to acid deposition for a wide range of forest soils in the United States.

In red spruce stands, a clear link exists between acid deposition, calcium supply, and sensitivity to abiotic stress. Red spruce uptake and retention of calcium is impacted by acid deposition in two main ways: Leaching of important stores of calcium from needles and decreased root uptake of calcium due to calcium depletion from the soil and aluminum mobilization. These changes increase the sensitivity of red spruce to winter injuries under normal winter conditions in the Northeast, result in the loss of needles, slow tree growth, and impair the overall health and productivity of forest ecosystems in many areas of the eastern United States. In addition, recent studies of sugar maple decline in the Northeast demonstrate a link between low base cation availability, high levels of aluminum and manganese in the soil, and increased levels of tree mortality due to native defoliating insects.

Although sulfate is the primary cause of base cation leaching, nitrate is a significant contributor in watersheds that are nearly nitrogen saturated. Base cation depletion is a cause for concern because of the role these ions play in surface water acid neutralization and their importance as essential nutrients for tree growth (calcium, magnesium and potassium).

This regulatory action will decrease acid deposition in the transport region and is likely to have positive effects on the health and productivity of forest systems in the region.

iii. Coastal Ecosystems

Since 1990, a large amount of research has been conducted on the impact of nitrogen deposition to coastal waters. Nitrogen is often the limiting nutrient in coastal ecosystems. Increasing the levels of nitrogen in coastal waters can cause significant changes to those ecosystems. In recent decades, human activities have accelerated nitrogen nutrient inputs, causing excessive growth of algae and leading to degraded water quality and associated impairments of estuarine and coastal resources.

Atmospheric deposition of nitrogen is a significant source of nitrogen to many estuaries. The amount of nitrogen entering estuaries due to atmospheric deposition varies widely, depending on the size and location of the estuarine watershed and other sources of nitrogen in the watershed. There are a few estuaries where atmospheric deposition of nitrogen contributes well over 40 percent of the total nitrogen load; however, in most estuaries for which estimates exist, the contribution from atmospheric deposition ranges from 15–30 percent. The area of the country with the highest air deposition rates (30 percent deposition rates) includes many estuaries along the northeast seaboard from Massachusetts to the Chesapeake Bay and along the central Gulf of Mexico coast.

In 1999, National Oceanic and Atmospheric Administration (NOAA) published the results of a 5-year national assessment of the severity and extent of estuarine eutrophication. An estuary is defined as the inland arm of the sea that meets the mouth of a river. The 138 estuaries characterized in the study represent more than 90 percent of total estuarine water surface area and the total number of U.S. estuaries. The study found that estuaries with moderate to high eutrophication represented 65 percent of the estuarine surface area.

Eutrophication is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, and the Gulf of Mexico. In such areas, the "overproduced" algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases, causing dramatic fish kills. Severe and persistent eutrophication often directly impacts human activities. For example, fishery resource losses can be caused directly by fish kills associated with low dissolved oxygen and toxic blooms. Declines in tourism occur when low dissolved oxygen causes noxious smells and floating mats of algal blooms create unfavorable aesthetic conditions. Risks to human health increase when the toxins from algal blooms accumulate in edible fish and shellfish, and when toxins become airborne, causing respiratory problems due to inhalation. According to the NOAA report, more than half of the nation's estuaries have moderate to high expressions of at least one of these symptoms'an indication that eutrophication is well developed in more than half of U.S. estuaries.

This rule is anticipated to reduce nitrogen deposition in the CAIR region. Thus, reductions in the levels of nitrogen deposition will have a positive impact upon current eutrophic conditions in estuaries and coastal areas in the region. While we are unable to monetize the benefits of such reductions, the Chesapeake Bay Program estimated the reduced mass of delivered nitrogen loads likely to result from the CAIR, based upon the CAIR proposal deposition estimates published in January 2004. Atmospheric deposition of nitrogen accounts for a significant portion of the nitrogen loads to the Chesapeake with 28 percent of the nitrogen loads from the watershed coming from air deposition. Based upon the CAIR proposal, nitrogen deposition rates published in the January 2004 proposal, the Chesapeake Bay Program finds that the CAIR will likely reduce the nitrogen loads to the Bay by 10 million pounds per year by 2010.[178] These substantial nitrogen load reductions more than fulfill the EPA's commitment to reduce atmospheric deposition delivered to the Chesapeake Bay by 8 million pounds.

b. Are There Health or Welfare Disbenefits of the CAIR That Have Not Been Quantified?

In contrast to the additional benefits of the rule discussed above, it is also possible that this rule will result in disbenefits in some areas of the region. Current levels of nitrogen deposition in these areas may provide passive fertilization for forest and terrestrial ecosystems where nutrients are a limiting factor and for some croplands.

The effects of ozone and PM on radiative transfer in the atmosphere can also lead to effects of uncertain magnitude and direction on the penetration of ultraviolet light and climate. Ground level ozone makes up a small percentage of total atmospheric ozone (including the stratospheric layer) that attenuates penetration of ultraviolet—b (UVb) radiation to the ground. The EPA's past evaluation of the information indicates that potential disbenefits would be small, variable, and with too many uncertainties to attempt quantification of relatively

[178] Sweeney, Jeff. "EPA's Chesapeake Bay Program Air Strategy." October 26, 2004.

small changes in average ozone levels over the course of a year (EPA, 2005a). The EPA's most recent provisional assessment of the currently available information indicates that potential but unquantifiable benefits may also arise from ozone-related attenuation of UVb radiation (EPA, 2005b). Sulfate and nitrate particles also scatter UVb, which can decrease exposure of horizontal surfaces to UVb, but increase exposure of vertical surfaces. In this case as well, both the magnitude and direction of the effect of reductions in sulfate and nitrate particles are too uncertain to quantify (EPA, 2004). Ozone is a greenhouse gas, and sulfates and nitrates can reduce the amount of solar radiation reaching the earth, but EPA believes that we are unable to quantify any net climate-related disbenefit or benefit associated with the combined ozone and PM reductions in this rule.

TABLE X–4.—UNQUANTIFIED AND NON-MONETIZED EFFECTS OF THE CLEAN AIR INTERSTATE RULE

Pollutant/effects	Effects not included in primary estimates—Changes in:
Ozone Health [a]	Premature mortality [b]
	Chronic respiratory damage
	Premature aging of the lungs
	Non-asthma respiratory emergency room visits
	Increased exposure to UVb
Ozone Welfare	Yields for
	–commercial forests
	–fruits and vegetables
	–commercial and non-commercial crops
	Damage to urban ornamental plants
	Impacts on recreational demand from damaged forest aesthetics
	Ecosystem functions
	Increased exposure to UVb
PM Health [c]	Premature mortality—short term exposures [d]
	Low birth weight
	Pulmonary function
	Chronic respiratory diseases other than chronic bronchitis
	Non-asthma respiratory emergency room visits
	Exposure to UVb (+/–) [e]
PM Welfare	Visibility in many Class I areas
	Residential and recreational visibility in non-Class I areas
	Soiling and materials damage
	Damage to ecosystem functions
	Exposure to UVb (+/–) [e]
Nitrogen and Sulfate Deposition Welfare	Commercial forests due to acidic sulfate and nitrate deposition
	Commercial freshwater fishing due to acidic deposition
	Recreation in terrestrial ecosystems due to acidic deposition
	Existence values for currently healthy ecosystems
	Commercial fishing, agriculture, and forests due to nitrogen deposition
	Recreation in estuarine ecosystems due to nitrogen deposition
	Ecosystem functions
	Passive fertilization
Mercury Health	Incidences of neurological disorders
	Incidences of learning disabilities
	Incidences of developmental delays
	Potential reproductive effects [f]
	Potential cardiovascular effects,[f] including:
	–Altered blood pressure regulation [f]
	–Increased heart rate variability [f]
	–Myocardial infarction [f]
Mercury Deposition Welfare	Impact on birds and mammals (*e.g.*, reproductive effects)
	Impacts to commercial, subsistence, and recreational fishing

Notes:

[a] In addition to primary economic endpoints, there are a number of biological responses that have been associated with ozone health effects including increased airway responsiveness to stimuli, inflamation in the lung, acute inflammation and respiratory cell damage, and increased susceptibility to respiratory infection. The public health impact of these biological responses may be partly represented by our quantified endpoints.

[b] Premature mortality associated with ozone is not currently included in the primary analysis. Recent evidence suggests that short-term exposures to ozone may have a significant effect on daily mortality rates, independent of exposure to PM. EPA is currently conducting a series of meta-analyses of the ozone mortality epidemiology literature. EPA will consider including ozone mortality in primary benefits analyses once a peer reviewed methodology is available.

[c] In addition to primary economic endpoints, there are a number of biological responses that have been associated with PM health effects including morphological changes and altered host defense mechanisms. The public health impact of these biological responses may be partly represented by our quantified endpoints.

[d] While some of the effects of short term exposures are likely to be captured in the estimates, there may be premature mortality due to short term exposure to PM not captured in the cohort study upon which the primary analysis is based.

[e] May result in benefits or disbenefits.

[f] These are potential effects as the literature is insufficient.

B. Paperwork Reduction Act

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA submitted a proposed Information Collection Request (ICR) (EPA ICR number 2512.01) to the OMB for review and approval on July 19, 2004 (FR 42720–42722). The ICR describes the nature of the information collection and its estimated burden and cost associated with the final rule. In cases where information is already collected by a related program, the ICR takes into account only the additional burden. This situation arises in States that are also subject to requirements of the Consolidated Emissions Reporting Rule (EPA ICR number 0916.10; OMB control number 2060–0088) or for sources that are subject to the Acid Rain Program (EPA ICR number 1633.13; OMB control number 2060–0258) or NO_X SIP Call (EPA ICR number 1857.03; OMB number 2060–0445) requirements.

The EPA solicited comments on specific aspects of the information collection. The purpose of the ICR is to estimate the anticipated monitoring, reporting, and recordkeeping burden estimates and associated costs for States, local governments, and sources that are expected to result from the CAIR.

The recordkeeping and reporting burden to sources resulting from States choosing to participate in a regional cap and trade program are expected to be less than $42 million annually at the time the monitors are implemented. This estimate includes the annualized cost of installing and operating appropriate SO_2 and NO_X emissions monitoring equipment to measure and report the total emissions of these pollutants from affected EGUs serving generators greater than 25 megawatt electrical. The burden to State and local air agencies includes any necessary SIP revisions, performing monitoring certification, and fulfilling audit responsibilities.

In accordance with the Paperwork Reduction Act, on July 19, 2004, an ICR was made available to the public for comment. The 60-day comment period expired September 19, 2004 with no public comments received specific to the ICR.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. § 601 et seq.)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121)(SBREFA), provides that whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code, as defined by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Table X–5 lists entities potentially impacted by this rule with applicable NAICS code.

X–5.—POTENTIALLY REGULATED CATEGORIES AND ENTITIES

Category	[1] NAICS code	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221112	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

According to the SBA size standards for NAICS code 221112 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See Michigan* v. *EPA*, 213 F.3d 663, 668–69 (DC Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001).

This rule would not establish requirements applicable to small entities. Instead, it would require States to develop, adopt, and submit SIP revisions that would achieve the necessary SO_2 and NO_X emissions reductions, and would leave to the States the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because affected States would have discretion to choose the sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not predict the effect of the rule on small entities. Although not required by the RFA, the Agency has conducted a small business analysis.

Overall, about 445 MW of total small entity capacity, or 1.0 percent of total small entity capacity in the CAIR region, is projected to be uneconomic to maintain under the CAIR relative to the base case. In practice, units projected to be uneconomic to maintain may be "mothballed," retired, or kept in service to ensure transmission reliability in certain parts of the grid. Our IPM modeling is unable to distinguish between these potential outcomes.

The EPA modeling identified 264 small entities within the CAIR region based upon the definition of small entity outlined above. From this analysis, EPA excluded 189 small entities that were not projected to have at least one unit with a generating capacity of 25 MW or great operating in the base case. Thus, we found that 75 small entities may potentially be affected by the CAIR. Of these 75 small entities, 28 may experience compliance costs in excess of one percent of revenues in 2010, and 46 may in 2015, based on the Agency's assumptions of how the affected States implement control measures to meet their emissions budgets as set forth in this rulemaking. Potentially affected small entities experiencing compliance costs in excess of 1 percent of revenues have

some potential for significant impact resulting from implementation of the CAIR. However, it is the Agency's position that because none of the affected entities currently operate in a competitive market environment, they should be able to pass the costs of complying with the CAIR on to rate-payers. Moreover, the decision to include only units greater than 25 MW in size exempts 185 small entities that would otherwise be potentially affected by the CAIR.

Two other points should be considered when evaluating the impact of the CAIR, specifically, and cap and trade programs more generally, on small entities. First, under the CAIR, the cap and trade program is designed such that States determine how NO_X allowances are to be allocated across units. A State that wishes to mitigate the impact of the rule on small entities might choose to allocate NO_X allowances in a manner that is favorable to small entities. Finally, the use of cap and trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, Local, or Tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, 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 EPA prepared a written statement for the final rule consistent with the requirements of section 202 of the UMRA. Furthermore, as EPA stated in the rule, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan. Furthermore, in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA carried out consultations with the governmental entities affected by this rule.

For several reasons, however, EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to this rulemaking action. First, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to revise its SIP that arises out of section 110(a) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

As noted earlier, however, notwithstanding these issues, EPA prepared for the final rule the statement that would be required by UMRA if its statutory provisions applied, and EPA has consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

The EPA conducted an analysis of the economic impacts anticipated from the CAIR for government-owned entities. The modeling conducted using the IPM projects that about 340 MW of municipality-owned capacity (about 0.4 percent of all subdivision, State and municipality capacity in the CAIR region) would be uneconomic to maintain under the CAIR, beyond what is projected in the base case. In practice, however, the units projected to be uneconomic to maintain may be 'mothballed,' retired, or kept in service to ensure transmission reliability in certain parts of the grid. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region.

The EPA modeling identified 265 State or municipally-owned entities, as well as subdivisions, within the CAIR region. The EPA excluded from the analysis government-owned entities that were not projected to have at least one unit with generating capacity of 25 MW or greater in the base case. Thus, we excluded 184 entities from the analysis. We found that 81 government entities will be potentially affected by CAIR. Of the 81 government entities, 20 may experience compliance costs in excess of 1 percent of revenues in 2010, and 39 may in 2015, based on our assumptions of how the affected States implement control measures to meet their emissions budgets as set forth in this rulemaking.

Government entities projected to experience compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of the CAIR. However, as noted above, it is EPA's position that because these government entities can pass on their costs of compliance to rate-payers, they will not be significantly impacted. Furthermore, the decision to include only units greater than 25 MW in size exempts 179 government entities that would otherwise be potentially affected by the CAIR.

The above points aside, potentially adverse impacts of the CAIR on State and municipality-owned entities could be limited by the fact that the cap and trade program is designed such that States determine how NO_X allowances are to be allocated across units. A State that wishes to mitigate the impact of the rule on State or municipality-owned entities might choose to allocate NO_X allowances in a manner that is favorable to these entities. Finally, the use of cap and trade in general will limit impacts on entities owned by small governments relative to a less flexible command-and-control program.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include

regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will 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. The CAA establishes the relationship between the Federal Government and the States, and this rule does not impact that relationship. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian 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 rule does not have "Tribal implications" as specified in Executive Order 13175.

This rule addresses transport of pollution that are precurors for ozone and $PM_{2.5}$. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement this rule. The Tribal Authority Rule (TAR) give Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

This rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented a federally-enforceable air quality management program under the CAA at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal Government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal Implementation Plan, today's rule could have implications for that Tribe, but it would not impose substantial direct costs upon the Tribe, nor preempt Tribal law. As provided above, EPA has estimated that the total annual private costs for the rule for the CAIR region as implemented by State, local, and Tribal governments is approximately $2.4 billion in 2010 and $3.6 billion in 2015 (1999$). There are currently very few emissions sources in Indian country that could be affected by this rule and the percentage of Tribal land that will be impacted is very small. For Tribes that choose to regulate sources in Indian country, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

Although Executive Order 13175 does not apply to this rule, EPA consulted with Tribal officials in developing this rule. The EPA has encouraged Tribal input at an early stage. Also, EPA held periodic meetings with the States and the Tribes during the technical development of this rule. Three meetings were held with the Crow Tribe, where the Tribe expressed concerns about potential impacts of the rule on their coal mine operations. In addition, EPA held three calls with Tribal environmental professionals to address concerns specific to the Tribes. These discussions have given EPA valuable information about Tribal concerns regarding the development of this rule. The EPA has provided briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums. Input from Tribal representatives has been taken into consideration in development of this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns 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, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in this rule will further improve air quality and will further improve children's health.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking (1) (i) a significant regulatory action under Executive Order 12866 or any successor order, and (ii) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) designated by the Administrator of the Office of Information and Regulatory Affairs as a "significant energy action." This final rule is a significant regulatory action under Executive Order 12866, and this rule may have a significant adverse effect on the supply, distribution, or use of energy.

If States choose to obtain the emissions reductions required by this rule by regulating EGUs, EPA projects that approximately 5.3 GWs of coal-fired generation may be removed from operation by 2010. In practice, however, the units projected to be uneconomic to maintain may be 'mothballed,' retired, or kept in service to ensure transmission reliability in certain parts of the grid. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region. Less conservative assumptions regarding natural gas prices or electricity demand would create a greater incentive to keep these units operational. The EPA projects that the

average annual electricity price will increase by less than 2.7 percent in the CAIR region and that natural gas prices will increase by less than 1.6 percent. The EPA does not believe that this rule will have any other impacts that exceed the significance criteria.

The EPA believes that a number of features of today's rulemaking serve to reduce its impact on energy supply. First, the optional trading program provides considerable flexibility to the power sector and enables industry to comply with the emission reduction requirements in the most cost-effective manner, thus minimizing overall costs and the ultimate impact on energy supply. The ability to use banked allowances from the existing title IV SO_2 trading program and the NO_X SIP Call Trading Program also provide additional flexibility. Second, the CAIR caps are set in two phases and provide adequate time for EGUs to install pollution controls. For more details concerning energy impacts, see the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005).

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rule would require all sources that participate in the trading program under part 96 to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75 EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under Sec. 75.66 before they are used under part 75.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[179] agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that "appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group." (EPA, 1998)

In accordance with Executive Order 12898, the Agency has considered whether this rule may have disproportionate negative impacts on minority or low income populations. The Agency expects this rule to lead to reductions in air pollution and exposures generally. For this reason, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

K. 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. The 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 a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

Any final action related to CAIR is "nationally applicable" within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110 of the CAA, a provision which has nationwide applicability. In addition, CAIR applies to 28 States and the District of Columbia. CAIR is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different States subject to it. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to CAIR. For these reasons, the Administrator also is determining that any final action regarding CAIR is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding CAIR must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Parts 72, 73, 74, 77 and 78

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental

[179] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 96

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 10, 2005.

Stephen L. Johnson,

Acting Administrator.

■ Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

§ 51.121 [Amended]

■ 2. Section 51.121 is amended by adding a new paragraph (r) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

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(r)(1) Notwithstanding any provisions of paragraph (p) of this section, subparts A through I of part 96 of this chapter, and any State's SIP to the contrary, the Administrator will not carry out any of the functions set forth for the Administrator in subparts A through I of part 96 of this chapter, or in any emissions trading program in a State's SIP approved under paragraph (p) of this section, with regard to any ozone season that occurs after September 30, 2008.

(2) Except as provided in § 51.123(bb), a State whose SIP is approved as meeting the requirements of this section and that includes an emissions trading program approved under paragraph (p) of this section must revise the SIP to adopt control measures that satisfy the same portion of the State's NO_X emission reduction requirements under this section as the State projected such emissions trading program would satisfy.

■ 3. Revise § 51.122 of subpart G to read as follows:

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_X emissions.

(a) For its transport SIP revision under § 51.121, each State must submit to EPA NO_X emissions data as described in this section.

(b) Each revision must provide for periodic reporting by the State of NO_X emissions data to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Annual reporting. Each revision must provide for annual reporting of NO_X emissions data as follows:

(i) The State must report to EPA emissions data from all NO_X sources within the State for which the State specified control measures in its SIP submission under § 51.121(g) of this part. This would include all sources for which the State has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the State developed in accordance with § 51.121(g).

(ii) If sources report NO_X emissions data to EPA annually pursuant to a trading program approved under § 51.121(p) or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR part 75, then the State need not provide annual reporting to EPA for such sources.

(2) Triennial reporting. Each plan must provide for triennial (*i.e.*, every third year) reporting of NO_X emissions data from all sources within the State.

(3) The data availability requirements in § 51.116 must be followed for all data submitted to meet the requirements of paragraphs (b)(1) and (2) of this section.

(c) The data reported in paragraph (b) of this section for stationary point sources must meet the following minimum criteria:

(1) For annual data reporting purposes the data must include the following minimum elements:

(i) Inventory year.
(ii) State Federal Information Placement System code.
(iii) County Federal Information Placement System code.
(iv) Federal ID code (plant).
(v) Federal ID code (point).
(vi) Federal ID code (process).
(vii) Federal ID code (stack).
(viii) Site name.
(ix) Physical address.
(x) SCC.
(xi) Pollutant code.
(xii) Ozone season emissions.
(xiii) Area designation.

(2) In addition, the annual data must include the following minimum elements as applicable to the emissions estimation methodology.

(i) Fuel heat content (annual).
(ii) Fuel heat content (seasonal).
(iii) Source of fuel heat content data.
(iv) Activity throughput (annual).
(v) Activity throughput (seasonal).
(vi) Source of activity/throughput data.
(vii) Spring throughput (%).
(viii) Summer throughput (%).
(ix) Fall throughput (%).
(x) Work weekday emissions.
(xi) Emission factor.
(xii) Source of emission factor.
(xiii) Hour/day in operation.
(xiv) Operations Start time (hour).
(xv) Day/week in operation.
(xvi) Week/year in operation.

(3) The triennial inventories must include the following data elements:

(i) The data required in paragraphs (c)(1) and (c)(2) of this section.
(ii) X coordinate (longitude).
(iii) Y coordinate (latitude).
(iv) Stack height.
(v) Stack diameter.
(vi) Exit gas temperature.
(vii) Exit gas velocity.
(viii) Exit gas flow rate.
(ix) SIC.
(x) Boiler/process throughput design capacity.
(xi) Maximum design rate.
(xii) Maximum capacity.
(xiii) Primary control efficiency.
(xiv) Secondary control efficiency.
(xv) Control device type.

(d) The data reported in paragraph (b) of this section for non-point sources must include the following minimum elements:

(1) For annual inventories it must include:

(i) Inventory year.
(ii) State FIPS code.
(iii) County FIPS code.
(iv) SCC.
(v) Emission factor.
(vi) Source of emission factor.
(vii) Activity/throughput level (annual).
(viii) Activity throughput level (seasonal).
(ix) Source of activity/throughput data.
(x) Spring throughput (%).
(xi) Summer throughput (%).
(xii) Fall throughput (%).
(xiii) Control efficiency (%).
(xiv) Pollutant code.
(xv) Ozone season emissions.
(xvi) Source of emissions data.
(xvii) Hour/day in operation.
(xviii) Day/week in operation.
(xix) Week/year in operations.

(2) The triennial inventories must contain, at a minimum, all the data required in paragraph (d)(1) of this section.

(e) The data reported in paragraph (b) of this section for mobile sources must meet the following minimum criteria:

(1) For the annual and triennial inventory purposes, the following data must be reported:

(i) Inventory year.
(ii) State FIPS code.

(iii) County FIPS code.
(iv) SCC.
(v) Emission factor.
(vi) Source of emission factor.
(vii) Activity (this must be reported for both highway and nonroad activity. Submit nonroad activity in the form of hours of activity at standard load (either full load or average load) for each engine type, application, and horsepower range. Submit highway activity in the form of vehicle miles traveled (VMT) by vehicle class on each roadway type. Report both highway and nonroad activity for a typical ozone season weekday day, if the State uses EPA's default weekday/weekend activity ratio. If the State uses a different weekday/weekend activity ratio, submit separate activity level information for weekday days and weekend days.)
(viii) Source of activity data.
(ix) Pollutant code.
(x) Summer work weekday emissions.
(xi) Ozone season emissions.
(xii) Source of emissions data.
(2) [Reserved.]
(f) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information for EPA to verify the calculated value of ozone season emissions.
(g) *Reporting schedules.* (1) Data collection is to begin during the ozone season one year prior to the State's NO_X SIP Call compliance date.
(2) Reports are to be submitted according to paragraph (b) of this section and the schedule in Table 1. After 2008, trienniel reports are to be submitted every third year and annual reports are to be submitted each year that a trienniel report is not required.

TABLE 1.—SCHEDULE FOR SUBMITTING REPORTS

Data collection year	Type of report required
2002	Trienniel.
2003	Annual.
2004	Annual.
2005	Trienniel.
2006	Annual.
2007	Annual.
2008	Trienniel.

(3) States must submit data for a required year no later than 12 months after the end of the calendar year for which the data are collected.
(h) *Data Reporting Procedures.* When submitting a formal NO_X budget emissions report and associated data, States shall notify the appropriate EPA Regional Office.
(1) States are required to report emissions data in an electronic format to EPA. Several options are available for data reporting. States can obtain information on the current formats at the following Internet address: *http://www.epa.gov/ttn/chief,* by calling the EPA Info CHIEF help desk at (919) 541–1000 or by sending an e-mail to *info.chief@epa.gov.* Because electronic reporting technology continually changes, States are to contact the Emission Inventory Group (EIG) for the latest specific formats.
(2) For annual reporting (not for triennial reports), a State may have sources submit the data directly to EPA to the extent the sources are subject to a trading program that qualifies for approval under § 51.121(q), and the State has agreed to accept data in this format. The EPA will make both the raw data submitted in this format and summary data available to any State that chooses this option.
(i) *Definitions.* As used in this section, the following words and terms shall have the meanings set forth below:
(1) *Annual emissions.* Actual emissions for a plant, point, or process, either measured or calculated.
(2) *Ash content.* Inert residual portion of a fuel.
(3) *Area designation.* The designation of the area in which the reporting source is located with regard to the ozone NAAQS. This would include attainment or nonattainment designations. For nonattainment designations, the classification of the nonattainment area must be specified, *i.e.*, transitional, marginal, moderate, serious, severe, or extreme.
(4) *Boiler design capacity.* A measure of the size of a boiler, based on the reported maximum continuous steam flow. Capacity is calculated in units of MMBtu/hr.
(5) *Control device type.* The name of the type of control device (*e.g.*, wet scrubber, flaring, or process change).
(6) *Control efficiency.* The emissions reduction efficiency of a primary control device, which shows the amount of reductions of a particular pollutant from a process's emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.
(7) *Day/week in operations.* Days per week that the emitting process operates.
(8) *Emission factor.* Ratio relating emissions of a specific pollutant to an activity or material throughput level.
(9) *Exit gas flow rate.* Numeric value of stack gas flow rate.
(10) *Exit gas temperature.* Numeric value of an exit gas stream temperature.
(11) *Exit gas velocity.* Numeric value of an exit gas stream velocity.
(12) *Fall throughput (%).* Portion of throughput for the 3 fall months (September, October, November). This represents the expression of annual activity information on the basis of four seasons, typically spring, summer, fall, and winter. It can be represented either as a percentage of the annual activity (*e.g.*, production in summer is 40 percent of the year's production), or in terms of the units of the activity (*e.g.*, out of 600 units produced, spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).
(13) *Federal ID code (plant).* Unique codes for a plant or facility, containing one or more pollutant-emitting sources.
(14) *Federal ID code (point).* Unique codes for the point of generation of emissions, typically a physical piece of equipment.
(15) *Federal ID code (stack number).* Unique codes for the point where emissions from one or more processes are released into the atmosphere.
(16) *Federal Information Placement System (FIPS).* The system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.
(17) *Heat content.* The thermal heat energy content of a solid, liquid, or gaseous fuel. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.
(18) *Hr/day in operations.* Hours per day that the emitting process operates.
(19) *Maximum design rate.* Maximum fuel use rate based on the equipment's or process' physical size or operational capabilities.
(20) *Maximum nameplate capacity.* A measure of the size of a generator which is put on the unit's nameplate by the manufacturer. The data element is reported in megawatts (MW) or kilowatts (KW).
(21) *Mobile source.* A motor vehicle, nonroad engine or nonroad vehicle, where:
(i) Motor vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway;
(ii) Nonroad engine means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202 of the CAA;
(iii) Nonroad vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(22) *Ozone season.* The period May 1 through September 30 of a year.

(23) *Physical address.* Street address of facility.

(24) *Point source.* A non-mobile source which emits 100 tons of NO_X or more per year unless the State designates as a point source a non-mobile source emitting at a specified level lower than 100 tons of NO_X per year. A non-mobile source which emits less NO_X per year than the point source threshold is a non-point source.

(25) *Pollutant code.* A unique code for each reported pollutant that has been assigned in the EIIP Data Model. Character names are used for criteria pollutants, while Chemical Abstracts Service (CAS) numbers are used for all other pollutants. Some States may be using storage and retrieval of aerometric data (SAROAD) codes for pollutants, but these should be able to be mapped to the EIIP Data Model pollutant codes.

(26) *Process rate/throughput.* A measurable factor or parameter that is directly or indirectly related to the emissions of an air pollution source. Depending on the type of source category, activity information may refer to the amount of fuel combusted, the amount of a raw material processed, the amount of a product that is manufactured, the amount of a material that is handled or processed, population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

(27) *SCC.* Source category code. A process-level code that describes the equipment or operation emitting pollutants.

(28) *Secondary control efficiency (%).* The emissions reductions efficiency of a secondary control device, which shows the amount of reductions of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.

(29) *SIC.* Standard Industrial Classification code. U.S. Department of Commerce's categorization of businesses by their products or services.

(30) *Site name.* The name of the facility.

(31) *Spring throughput (%).* Portion of throughput or activity for the 3 spring months (March, April, May). See the definition of Fall Throughput.

(32) *Stack diameter.* Stack physical diameter.

(33) *Stack height.* Stack physical height above the surrounding terrain.

(34) *Start date (inventory year).* The calendar year that the emissions estimates were calculated for and are applicable to.

(35) *Start time (hour).* Start time (if available) that was applicable and used for calculations of emissions estimates.

(36) *Summer throughput (%).* Portion of throughput or activity for the 3 summer months (June, July, August). See the definition of Fall Throughput.

(37) *Summer work weekday emissions.* Average day's emissions for a typical day.

(38) *VMT by Roadway Class.* This is an expression of vehicle activity that is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Since VMT does not directly correlate to emissions that occur while the vehicle is not moving, these non-moving emissions are incorporated into EPA's MOBILE model emission factors.

(39) *Week/year in operation.* Weeks per year that the emitting process operates.

(40) *Work Weekday.* Any day of the week except Saturday or Sunday.

(41) *X coordinate (longitude).* An object's east-west geographical coordinate.

(42) *Y coordinate (latitude).* An object's north-south geographical coordinate.

■ 4. Part 51 is amended by adding § 51.123 to Subpart G to read as follows:

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

(a)(1) Under section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each State identified in paragraph (c)(1) and (2) of this section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting NO_X in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the fine particles ($PM_{2.5}$) NAAQS.

(2)(a) Under section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each State identified in paragraph (c)(1) and (3) of this section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting NO_X in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the 8-hour ozone NAAQS.

(b) For each State identified in paragraph (c) of this section, the SIP revision required under paragraph (a) of this section will contain adequate provisions, for purposes of complying with section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), only if the SIP revision contains control measures that assure compliance with the applicable requirements of this section.

(c) In addition to being subject to the requirements in paragraphs (b) and (d) of this section:

(1) Alabama, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia shall be subject to the requirements contained in paragraphs (e) through (cc) of this section;

(2) Georgia, Minnesota, and Texas shall be subject to the requirements in paragraphs (e) through (o) and (cc) of this section; and

(3) Arkansas, Connecticut, Delaware, Massachusetts, and New Jersey shall be subject to the requirements contained in paragraphs (q) through (cc) of this section.

(d)(1) The State's SIP revision under paragraph (a) of this section must be submitted to EPA by no later than September 11, 2006.

(2) The requirements of appendix V to this part shall apply to the SIP revision under paragraph (a) of this section.

(3) The State shall deliver 5 copies of the SIP revision under paragraph (a) of this section to the appropriate Regional Office, with a letter giving notice of such action.

(e) The State's SIP revision shall contain control measures and demonstrate that they will result in compliance with the State's Annual EGU NO_X Budget, if applicable, and achieve the State's Annual Non-EGU NO_X Reduction Requirement, if applicable, for the appropriate periods. The amounts of the State's Annual EGU NO_X Budget and Annual Non-EGU NO_X Reduction Requirement shall be determined as follows:

(1)(i) The Annual EGU NO_X Budget for the State is defined as the total amount of NO_X emissions from all EGUs in that State for a year, if the State meets the requirements of paragraph (a)(1) of this section by imposing control measures, at least in part, on EGUs. If the State imposes control measures

under this section on only EGUs, the Annual EGU NO_X Budget for the State shall not exceed the amount, during the indicated periods, specified in paragraph (e)(2) of this section.

(ii) The Annual Non-EGU NO_X Reduction Requirement, if applicable, is defined as the total amount of NO_X emission reductions that the State demonstrates, in accordance with paragraph (g) of this section, it will achieve from non-EGUs during the appropriate period. If the State meets the requirements of paragraph (a)(1) of this section by imposing control measures on only non-EGUs, then the State's Annual Non-EGU NO_X Reduction Requirement shall equal or exceed, during the appropriate periods, the amount determined in accordance with paragraph (e)(3) of this section.

(iii) If a State meets the requirements of paragraph (a)(1) of this section by imposing control measures on both EGUs and non-EGUs, then:

(A) The Annual Non-EGU NO_X Reduction Requirement shall equal or exceed the difference between the amount specified in paragraph (e)(2) of this section for the appropriate period and the amount of the State's Annual EGU NO_X Budget specified in the SIP revision for the appropriate period; and

(B) The Annual EGU NO_X Budget shall not exceed, during the indicated periods, the amount specified in paragraph (e)(2) of this section plus the amount of the Annual Non-EGU NO_X Reduction Requirement under paragraph (e)(1)(iii)(A) of this section for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a)(1) of this section by imposing control measures on only EGUs, the amount of the Annual EGU NO_X Budget, in tons of NO_X per year, shall be as follows, for the indicated State for the indicated period:

State	Annual EGU NO_X budget for 2009–2014 (tons)	Annual EGU NO_X budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966

(3) For a State that complies with the requirements of paragraph (a)(1) of this section by imposing control measures on only non-EGUs, the amount of the Annual Non-EGU NO_X Reduction Requirement, in tons of NO_X per year, shall be determined, for the State for 2009 and thereafter, by subtracting the amount of the State's Annual EGU NO_X Budget for the appropriate year, specified in paragraph (e)(2) of this section from the amount of the State's NO_X baseline EGU emissions inventory projected for the appropriate year, specified in Table 5 of "Regional and State SO_2 and NO_X Budgets", March 2005 (available at *http://www.epa.gov/cleanairinterstaterule*).

(4)(i) Notwithstanding the State's obligation to comply with paragraph (e)(2) or (3) of this section, the State's SIP revision may allow sources required by the revision to implement control measures to demonstrate compliance using credit issued from the State's compliance supplement pool, as set forth in paragraph (e)(4)(ii) of this section.

(ii) The State-by-State amounts of the compliance supplement pool are as follows:

State	Compliance supplement pool
Alabama	10,166
District of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898

(iii) The SIP revision may provide for the distribution of credits from the compliance supplement pool to sources

that are required to implement control measures using one or both of the following two mechanisms:

(A) The State may issue credit from compliance supplement pool to sources that are required by the SIP revision to implement NO_X emission control measures and that implement NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable at any time during such years. Such a source may be issued one credit from the compliance supplement pool for each ton of such emission reductions in 2007 and 2008.

(*1*) The State shall complete the issuance process by January 1, 2010..

(*2*) The emissions reductions for which credits are issued must have been demonstrated by the owners and operators of the source to have occurred during 2007 and 2008 and not to be necessary to comply with any applicable State or federal emissions limitation.

(*3*) The emissions reductions for which credits are issued must have been quantified by the owners and operators of the source:

(*i*) For EGUs and for fossil-fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBut/hr, using emissions data determined in accordance with subpart H of part 75 of this chapter; and

(*ii*) For non-EGUs not described in paragraph (e)(4)(iii)(A)(3)(i) of this section, using emissions data determined in accordance with subpart H of part 75 of this chapter or, if the State demonstrates that compliance with subpart H of part 75 of this chapter is not practicable, determined, to the extent practicable, with the same degree of assurance with which emissions data are determined for sources subject to subpart H of part 75.

(*4*) If the SIP revision contains approved provisions for an emissions trading program, the owners and operators of sources that receive credit according to the requirements of this paragraph may transfer the credit to other sources or persons according to the provisions in the emissions trading program.

(B) The State may issue credit from the compliance supplement pool to sources that are required by the SIP revision to implement NO_X emission control measures and whose owners and operators demonstrate a need for an extension, beyond 2009, of the deadline for the source for implementing such emission controls.

(*1*) The State shall complete the issuance process by January 1, 2010.

(*2*) The State shall issue credit to a source only if the owners and operators of the source demonstrate that:

(*i*) For a source used to generate electricity, implementation of the SIP revision's applicable control measures by 2009 would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible for the owners and operators of the source to obtain a sufficient amount of electricity, to prevent such undue risk, from other electricity generation facilities during the installation of control technology at the source necessary to comply with the SIP revision.

(*ii*) For a source not used to generate electricity, compliance with the SIP revision's applicable control measures by 2009 would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in paragraph (e)(4)(iii)(B)(2)(i) of this section.

(*iii*) This demonstration must include a showing that it would not be possible for the source to comply with applicable control measures by obtaining sufficient credits under paragraph (e)(4)(iii)(A) of this section, or by acquiring sufficient credits from other sources or persons, to prevent undue risk.

(f) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (e) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2)(i) If a State elects to impose control measures on EGUs, then those measures must impose an annual NO_X mass emissions cap on all such sources in the State.

(ii) If a State elects to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose an annual NO_X mass emissions cap on all such sources in the State.

(iii) If a State elects to impose control measures on non-EGUs other than those described in paragraph (f)(2)(ii) of this section, then those measures must impose an annual NO_X mass emissions cap on all such sources in the State or the State must demonstrate why such emissions cap is not practicable and adopt alternative requirements that ensure that the State will comply with its requirements under paragraph (e) of this section, as applicable, in 2009 and subsequent years.

(g)(1) Each SIP revision that contains control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a)(1) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Annual Non-EGU NO_X Reduction Requirement under paragraph (e) of this section and are not adopted or implemented by the State, as of May 12, 2005, and are not adopted or implemented by the Federal government, as of the date of submission of the SIP revision by the State to EPA.

(2) The demonstration under paragraph (g)(1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP revision requires control measures:

(i) A detailed historical baseline inventory of NO_X mass emissions from the source category in a representative year consisting, at the State's election, of 2002, 2003, 2004, or 2005, or an average of 2 or more of those years, absent the control measures specified in the SIP revision.

(A) This inventory must represent estimates of actual emissions based on monitoring data in accordance with subpart H of part 75 of this chapter, if the source category is subject to monitoring requirements in accordance with subpart H of part 75 of this chapter.

(B) In the absence of monitoring data in accordance with subpart H of part 75 of this chapter, actual emissions must be quantified, to the maximum extent practicable, with the same degree of assurance with which emissions are quantified for sources subject to subpart H of part 75 of this chapter and using source-specific or source-category-specific assumptions that ensure a source's or source category's actual emissions are not overestimated. If a State uses factors to estimate emissions, production or utilization, or effectiveness of controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated.

(C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development and must be consistent with the planning assumptions regarding vehicle miles

traveled and other factors current at the time of the SIP development.

(D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates methodologies must be approved by EPA.

(ii) A detailed baseline inventory of NO_X mass emissions from the source category in the years 2009 and 2015, absent the control measures specified in the SIP revision and reflecting changes in these emissions from the historical baseline year to the years 2009 and 2015, based on projected changes in the production input or output, population, vehicle miles traveled, economic activity, or other factors as applicable to this source category.

(A) These inventories must account for implementation of any control measures that are otherwise required by final rules already promulgated, as of May 12, 2005, or adopted or implemented by any federal agency, as of the date of submission of the SIP revision by the State to EPA, and must exclude any control measures specified in the SIP revision to meet the NO_X emissions reduction requirements of this section.

(B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category and must be consistent with both national projections and relevant official planning assumptions, including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are inconsistent with official U.S. Census projections of population or with energy consumption projections contained in the U.S. Department of Energy's most recent Annual Energy Outlook, then the SIP revision must make adjustments to correct the inconsistency or must demonstrate how the official planning assumptions are more accurate.

(C) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline year and 2009 or 2015, as appropriate.

(iii) A projection of NO_X mass emissions in 2009 and 2015 from the source category assuming the same projected changes as under paragraph (g)(2)(ii) of this section and resulting from implementation of each of the control measures specified in the SIP revision.

(A) These inventories must address the possibility that the State's new control measures may cause production or utilization, and emissions, to shift to unregulated or less stringently regulated sources in the source category in the same or another State, and these inventories must include any such amounts of emissions that may shift to such other sources.

(B) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2009 and 2015 NO_X emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (g)(2)(iii) of this section for 2009 and 2015, respectively, from the lower of the amounts in paragraph (g)(2)(i) or (g)(2)(ii) of this section for 2009 and 2015, respectively, may be credited towards the State's Annual Non-EGU NO_X Reduction Requirement in paragraph (e)(3) of this section for the appropriate period.

(v) Each SIP revision must identify the sources of the data used in each estimate and each projection of emissions.

(h) Each SIP revision must comply with § 51.116 (regarding data availability).

(i) Each SIP revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (e) of this section as follows:

(1) The SIP revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of NO_X emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The SIP revision must comply with § 51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the SIP revision contains any transportation control measures, then the SIP revision must comply with § 51.213 (regarding transportation control measures);

(4)(i) If the SIP revision contains measures to control EGUs, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of subpart H of part 75 of this chapter.

(ii) If the SIP revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of subpart H of part 75 of this chapter.

(iii) If the SIP revision contains measures to control any other non-EGUs that are not described in paragraph (i)(4)(ii) of this section, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of subpart H of part 75 of this chapter, or the State must demonstrate why such requirements are not practicable and adopt alternative requirements that ensure that the required emissions reductions will be quantified, to the maximum extent practicable, with the same degree of assurance with which emissions are quantified for sources subject to subpart H of part 75 of this chapter.

(j) Each SIP revision must show that the State has legal authority to carry out the SIP revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Annual EGU NO_X Budget or the Annual Non-EGU NO_X Reduction Requirement, as applicable, under paragraph (e) of this section;

(2) Enforce applicable laws, regulations, and standards and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4)(i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (j)(4)(i) of this section available to the public within a reasonable time after being reported and as correlated with any applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation that the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under section 114 of the CAA.

(l)(1) A SIP revision may assign legal authority to local agencies in accordance with § 51.232.

(2) Each SIP revision must comply with § 51.240 (regarding general plan requirements).

(m) Each SIP revision must comply with § 51.280 (regarding resources).

(n) Each SIP revision must provide for State compliance with the reporting requirements in § 51.125.

(o)(1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AA through II of part 96 of this chapter (CAIR NO_X Annual Trading Program), incorporates such subparts by reference into its regulations, or adopts regulations that differ substantively from such subparts only as set forth in paragraph (o)(2) of this section, then such emissions trading program in the State's SIP revision is automatically approved as meeting the requirements of paragraph (e) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(2) If a State adopts an emissions trading program that differs substantively from subparts AA through II of part 96 of this chapter only as follows, then the emissions trading program is approved as set forth in paragraph (o)(1) of this section.

(i) The State may decline to adopt the CAIR NO_X opt-in provisions of:

(A) Subpart II of this part and the provisions applicable only to CAIR NO_X opt-in units in subparts AA through HH of this part;

(B) Section 96.188(b) of this chapter and the provisions of subpart II of this part applicable only to CAIR NO_X opt-in units under § 96.188(b); or

(C) Section 96.188(c) of this chapter and the provisions of subpart II of this part applicable only to CAIR NO_X opt-in units under § 96.188(c).

(ii) The State may decline to adopt the allocation provisions set forth in subpart EE of part 96 of this chapter and may instead adopt any methodology for allocating CAIR NO_X allowances to individual sources, as follows:

(A) The State's methodology must not allow the State to allocate CAIR NO_X allowances for a year in excess of the amount in the State's Annual EGU NO_X Budget for such year;

(B) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31, 2006 for 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the year after the year of the notification deadline; and

(C) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31 of the year for which the CAIR NO_X allowances are allocated.

(3) A State that adopts an emissions trading program in accordance with paragraph (o)(1) or (2) of this section is not required to adopt an emissions trading program in accordance with paragraph (aa)(1) or (2) of this section or § 96.124(o)(1) or (2).

(4) If a State adopts an emissions trading program that differs substantively from subparts AA through HH of part 96 of this chapter, other than as set forth in paragraph (o)(2) of this section, then such emissions trading program is not automatically approved as set forth in paragraph (o)(1) or (2) of this section and will be reviewed by the Administrator for approvability in accordance with the other provisions of this section, provided that the NO_X allowances issued under such emissions trading program shall not, and the SIP revision shall state that such NO_X allowances shall not, qualify as CAIR NO_X allowances or CAIR NO_X Ozone Season allowances under any emissions trading program approved under paragraphs (o)(1) or (2) or (aa)(1) or (2) of this section.

(p) [Reserved]

(q) The State's SIP revision shall contain control measures and demonstrate that they will result in compliance with the State's Ozone Season EGU NO_X Budget, if applicable, and achieve the State's Ozone Season Non-EGU NO_X Reduction Requirement, if applicable, for the appropriate periods. The amounts of the State's Ozone Season EGU NO_X Budget and Ozone Season Non-EGU NO_X Reduction Requirement shall be determined as follows:

(1)(i) The Ozone Season EGU NO_X Budget for the State is defined as the total amount of NO_X emissions from all EGUs in that State for an ozone season, if the State meets the requirements of paragraph (a)(2) of this section by imposing control measures, at least in part, on EGUs. If the State imposes control measures under this section on only EGUs, the Ozone Season EGU NO_X Budget for the State shall not exceed the amount, during the indicated periods, specified in paragraph (q)(2) of this section.

(ii) The Ozone Season Non-EGU NO_X Reduction Requirement, if applicable, is defined as the total amount of NO_X emission reductions that the State demonstrates, in accordance with paragraph (s) of this section, it will achieve from non-EGUs during the appropriate period. If the State meets the requirements of paragraph (a)(2) of this section by imposing control measures on only non-EGUs, then the State's Ozone Season Non-EGU NO_X Reduction Requirement shall equal or exceed, during the appropriate periods, the amount determined in accordance with paragraph (q)(3) of this section.

(iii) If a State meets the requirements of paragraph (a)(2) of this section by imposing control measures on both EGUs and non-EGUs, then:

(A) The Ozone Season Non-EGU NO_X Reduction Requirement shall equal or exceed the difference between the amount specified in paragraph (q)(2) of this section for the appropriate period and the amount of the State's Ozone Season EGU NO_X Budget specified in the SIP revision for the appropriate period; and

(B) The Ozone Season EGU NO_X Budget shall not exceed, during the indicated periods, the amount specified in paragraph (e)(2) of this section plus the amount of the Ozone Season Non-EGU NO_X Reduction Requirement under paragraph (q)(1)(iii)(A) of this section for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a)(2) of this section by imposing control measures on only EGUs, the amount of the Ozone Season EGU NO_X Budget, in tons of NO_X per ozone season, shall be as follows, for the indicated State for the indicated period:

State	Ozone season EGU NO_X budget for 2009–2014 (tons)	Ozone season EGU NO_X budget for 2015 and thereafter (tons)
Alabama	32,182	26,818

State	Ozone season EGU NO_X budget for 2009–2014 (tons)	Ozone season EGU NO_X budget for 2015 and thereafter (tons)
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

(3) For a State that complies with the requirements of paragraph (a)(2) of this section by imposing control measures on only non-EGUs, the amount of the Ozone Season Non-EGU NO_X Reduction Requirement, in tons of NO_X per ozone season, shall be determined, for the State for 2009 and thereafter, by subtracting the amount of the State's Ozone Season EGU NO_X Budget for the appropriate year, specified in paragraph (e)(2) of this section, from the amount of the State's NO_X baseline EGU emissions inventory projected for the ozone season in the appropriate year, specified in Table 7 of "Regional and State SO_2 and NO_X Budgets", March 2005 (available at: *http://www.epa.gov/cleanairinterstaterule*).

(4) Notwithstanding the State's obligation to comply with paragraph (q)(2) or (3) of this section, the State's SIP revision may allow sources required by the revision to implement NO_X emission control measures to demonstrate compliance using NO_X SIP Call allowances allocated under the NO_X Budget Trading Program for any ozone season during 2003 through 2008 that have not been deducted by the Administrator under the NO_X Budget Trading Program, if the SIP revision ensures that such allowances will not be available for such deduction under the NO_X Budget Trading Program.

(r) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (q) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2)(i) If a State elects to impose control measures on EGUs, then those measures must impose an ozone season NO_X mass emissions cap on all such sources in the State.

(ii) If a State elects to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose an ozone season NO_X mass emissions cap on all such sources in the State.

(iii) If a State elects to impose control measures on non-EGUs other than those described in paragraph (r)(2)(ii) of this section, then those measures must impose an ozone season NO_X mass emissions cap on all such sources in the State or the State must demonstrate why such emissions cap is not practicable and adopt alternative requirements that ensure that the State will comply with its requirements under paragraph (q) of this section, as applicable, in 2009 and subsequent years.

(s)(1) Each SIP revision that contains control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a)(2) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Ozone Season Non-EGU NO_X Reduction Requirement under paragraph (q) of this section and are not adopted or implemented by the State, as of May 12, 2005, and are not adopted or implemented by the federal government, as of the date of submission of the SIP revision by the State to EPA.

(2) The demonstration under paragraph (s)(1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP revision requires control measures:

(i) A detailed historical baseline inventory of NO_X mass emissions from the source category in a representative ozone season consisting, at the State's election, of the ozone season in 2002, 2003, 2004, or 2005, or an average of 2 or more of those ozone seasons, absent the control measures specified in the SIP revision.

(A) This inventory must represent estimates of actual emissions based on monitoring data in accordance with subpart H of part 75 of this chapter, if the source category is subject to

monitoring requirements in accordance with subpart H of part 75 of this chapter.

(B) In the absence of monitoring data in accordance with subpart H of part 75 of this chapter, actual emissions must be quantified, to the maximum extent practicable, with the same degree of assurance with which emissions are quantified for sources subject to subpart H of part 75 of this chapter and using source-specific or source-category-specific assumptions that ensure a source's or source category's actual emissions are not overestimated. If a State uses factors to estimate emissions, production or utilization, or effectiveness of controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated.

(C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development and must be consistent with the planning assumptions regarding vehicle miles traveled and other factors current at the time of the SIP development.

(D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates methodologies must be approved by EPA.

(ii) A detailed baseline inventory of NO_X mass emissions from the source category in ozone seasons 2009 and 2015, absent the control measures specified in the SIP revision and reflecting changes in these emissions from the historical baseline ozone season to the ozone seasons 2009 and 2015, based on projected changes in the production input or output, population, vehicle miles traveled, economic activity, or other factors as applicable to this source category.

(A) These inventories must account for implementation of any control measures that are adopted or implemented by the State, as of May 12, 2005, or adopted or implemented by the federal government, as of the date of submission of the SIP revision by the State to EPA, and must exclude any control measures specified in the SIP revision to meet the NO_X emissions reduction requirements of this section.

(B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category and must be consistent with both national projections and relevant official planning assumptions including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are inconsistent with official U.S. Census projections of population or with energy consumption projections contained in the U.S. Department of Energy's most recent Annual Energy Outlook, then the SIP revision must make adjustments to correct the inconsistency or must demonstrate how the official planning assumptions are more accurate.

(C) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline ozone season and ozone season 2009 or ozone season 2015, as appropriate.

(iii) A projection of NO_X mass emissions in ozone season 2009 and ozone season 2015 from the source category assuming the same projected changes as under paragraph (s)(2)(ii) of this section and resulting from implementation of each of the control measures specified in the SIP revision.

(A) These inventories must address the possibility that the State's new control measures may cause production or utilization, and emissions, to shift to unregulated or less stringently regulated sources in the source category in the same or another State, and these inventories must include any such amounts of emissions that may shift to such other sources.

(B) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected ozone season 2009 and ozone season 2015 NO_X emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (s)(2)(iii) of this section for ozone season 2009 and ozone season 2015, respectively, from the lower of the amounts in paragraph (s)(2)(i) or (s)(2)(ii) of this section for ozone season 2009 and ozone season 2015, respectively, may be credited towards the State's Ozone Season Non-EGU NO_X Reduction Requirement in paragraph (q)(3) of this section for the appropriate period.

(v) Each SIP revision must identify the sources of the data used in each estimate and each projection of emissions.

(t) Each SIP revision must comply with § 51.116 (regarding data availability).

(u) Each SIP revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (q) of this section as follows:

(1) The SIP revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of NO_X emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The SIP revision must comply with § 51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the SIP revision contains any transportation control measures, then the SIP revision must comply with § 51.213 (regarding transportation control measures);

(4)(i) If the SIP revision contains measures to control EGUs, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of subpart H of part 75 of this chapter.

(ii) If the SIP revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of subpart H of part 75 of this chapter.

(iii) If the SIP revision contains measures to control any other non-EGUs that are not described in paragraph (u)(4)(ii) of this section, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of subpart H of part 75 of this chapter, or the State must demonstrate why such requirements are not practicable and adopt alternative requirements that ensure that the required emissions reductions will be quantified, to the maximum extent practicable, with the same degree of assurance with which emissions are quantified for sources subject to subpart H of part 75 of this chapter.

(v) Each SIP revision must show that the State has legal authority to carry out the SIP revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Ozone Season EGU NO_X Budget or the Ozone Season Non-EGU NO_X Reduction Requirement, as applicable, under paragraph (q) of this section;

(2) Enforce applicable laws, regulations, and standards and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4)(i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (v)(4)(i) of this section available to the public within a reasonable time after being reported and as correlated with any applicable emissions standards or limitations.

(w)(1) The provisions of law or regulation that the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (v)(3) and (4) of this section may be delegated to the State under section 114 of the CAA.

(x)(1) A SIP revision may assign legal authority to local agencies in accordance with § 51.232.

(2) Each SIP revision must comply with § 51.240 (regarding general plan requirements).

(y) Each SIP revision must comply with § 51.280 (regarding resources).

(z) Each SIP revision must provide for State compliance with the reporting requirements in § 51.125.

(aa)(1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AAAA through IIII of part 96 of this chapter (CAIR Ozone Season NO_X Trading Program), incorporates such subparts by reference into its regulations, or adopts regulations that differ substantively from such subparts only as set forth in paragraph (aa)(2) of this section, then such emissions trading program in the State's SIP revision is automatically approved as meeting the requirements of paragraph (q) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(2) If a State adopts an emissions trading program that differs substantively from subparts AAAA through IIII of part 96 of this chapter only as follows, then the emissions trading program is approved as set forth in paragraph (aa)(1) of this section.

(i) The State may expand the applicability provisions in § 96.304 to include all non-EGUs subject to the State's emissions trading program approved under § 51.121(p).

(ii) The State may decline to adopt the CAIR NO_X Ozone Season opt-in provisions of:

(A) Subpart IIII of this part and the provisions applicable only to CAIR NO_X Ozone Season opt-in units in subparts AAAA through HHHH of this part;

(B) Section 96.388(b) of this chapter and the provisions of subpart IIII of this part applicable only to CAIR NO_X Ozone Season opt-in units under § 96.388(b); or

(C) Section 96.388(c) of this chapter and the provisions of subpart IIII of this part applicable only to CAIR NO_X Ozone Season opt-in units under § 96.388(c).

(iii) The State may decline to adopt the allocation provisions set forth in subpart EEEE of part 96 of this chapter and may instead adopt any methodology for allocating CAIR NO_X Ozone Season allowances to individual sources, as follows:

(A) The State may provide for issuance of an amount of CAIR Ozone Season NO_X allowances for an ozone season, in addition to the amount in the State's Ozone Season EGU NO_X Budget for such ozone season, not exceeding the amount of NO_X SIP Call allowances allocated for the ozone season under the NO_X Budget Trading Program to non-EGUs that the applicability provisions in § 96.304 are expanded to include under paragraph (aa)(2)(i) of this section;

(B) The State's methodology must not allow the State to allocate CAIR Ozone Season NO_X allowances for an ozone season in excess of the amount in the State's Ozone Season EGU NO_X Budget for such ozone season plus any additional amount of CAIR Ozone Season NO_X allowances issued under paragraph (aa)(2)(iii)(A) of this section for such ozone season;

(C) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the ozone season in the 4th year after the year of the notification deadline; and

(D) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of CAIR Ozone Season NO_X allowances by July 31 of the calendar year of the ozone season for which the CAIR Ozone Season NO_X allowances are allocated.

(3) A State that adopts an emissions trading program in accordance with paragraph (aa)(1) or (2) of this section is not required to adopt an emissions trading program in accordance with paragraph (o)(1) or (2) of this section or § 51.153(o)(1) or (2).

(4) If a State adopts an emissions trading program that differs substantively from subparts AAAA through IIII of part 96 of this chapter, other than as set forth in paragraph (aa)(2) of this section, then such emissions trading program is not automatically approved as set forth in paragraph (aa)(1) or (2) of this section and will be reviewed by the Administrator for approvability in accordance with the other provisions of this section, provided that the NO_X allowances issued under such emissions trading program shall not, and the SIP revision shall state that such NO_X allowances shall not, qualify as CAIR NO_X allowances or CAIR Ozone Season NO_X allowances under any emissions trading program approved under paragraphs (o)(1) or (2) or (aa)(1) or (2) of this section.

(bb)(1)(i) The State may revise its SIP to provide that, for each ozone season during which a State implements control measures on EGUs or non-EGUs through an emissions trading program approved under paragraph (aa)(1) or (2) of this section, such EGUs and non-EGUs shall not be subject to the requirements of the State's SIP meeting the requirements of § 51.121, if the State meets the requirement in paragraph (bb)(1)(ii) of this section.

(ii) For a State under paragraph (bb)(1)(i) of this section, if the State's amount of tons specified in paragraph (q)(2) of this section exceeds the State's amount of NO_X SIP Call allowances allocated for the ozone season in 2009 or in any year thereafter for the same types and sizes of units as those covered by the amount of tons specified in paragraph (q)(2) of this section, then the State must replace the former amount for such ozone season by the latter amount for such ozone season in applying paragraph (q) of this section.

(2) Rhode Island may revise its SIP to provide that, for each ozone season during which Rhode Island implements control measures on EGUs and non-EGUs through an emissions trading program adopted in regulations that differ substantively from subparts AAAA through IIII of part 96 of this

chapter as set forth in this paragraph, such EGUs and non-EGUs shall not be subject to the requirements of the State's SIP meeting the requirements of § 51.121.

(i) Rhode Island must expand the applicability provisions in § 96.304 to include all non-EGUs subject to Rhode Island's emissions trading program approved under § 51.121(p).

(ii) Rhode Island may decline to adopt the CAIR NO_X Ozone Season opt-in provisions of:

(A) Subpart IIII of this part and the provisions applicable only to CAIR NO_X Ozone Season opt-in units in subparts AAAA through HHHH of this part;

(B) Section 96.388(b) of this chapter and the provisions of subpart IIII of this part applicable only to CAIR NO_X Ozone Season opt-in units under § 96.388(b); or

(C) Section 96.388(c) of this chapter and the provisions of subpart IIII of this part applicable only to CAIR NO_X Ozone Season opt-in units under § 96.388(c).

(iii) Rhode Island may adopt the allocation provisions set forth in subpart EEEE of part 96 of this chapter, provided that Rhode Island must provide for issuance of an amount of CAIR Ozone Season NO_X allowances for an ozone season not exceeding 936 tons for 2009 and thereafter;

(iv) Rhode Island may adopt any methodology for allocating CAIR NO_X Ozone Season allowances to individual sources, as follows:

(A) Rhode Island's methodology must not allow Rhode Island to allocate CAIR Ozone Season NO_X allowances for an ozone season in excess of 936 tons for 2009 and thereafter;

(B) Rhode Island's methodology must require that, for EGUs commencing operation before January 1, 2001, Rhode Island will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the ozone season in the 4th year after the year of the notification deadline; and

(C) Rhode Island's methodology must require that, for EGUs commencing operation on or after January 1, 2001, Rhode Island will determine, and notify the Administrator of, each unit's allocation of CAIR Ozone Season NO_X allowances by July 31 of the calendar year of the ozone season for which the CAIR Ozone Season NO_X allowances are allocated.

(3) Notwithstanding a SIP revision by a State authorized under paragraph (bb)(1) of this section or by Rhode Island under paragraph (bb)(2) of this section, if the State's or Rhode Island's SIP that, without such SIP revision, imposes control measures on EGUs or non-EGUs under § 51.121 is determined by the Administrator to meet the requirements of § 51.121, such SIP shall be deemed to continue to meet the requirements of § 51.121.

(cc) The terms used in this section shall have the following meanings:

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to allowances, the determination of the amount of allowances to be initially credited to a source.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

Electric generating unit or *EGU* means:

(1) Except as provided in paragraph (2) of this definition, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (1) of this definition starting on the day on which the unit first no longer qualifies as a cogeneration unit.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Generator means a device that produces electricity.

Maximum design heat input means:

(1) Starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit;

(2)(i) Except as provided in paragraph (2)(ii) of this definition, starting from the completion of any subsequent physical change in the unit resulting in an increase in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such increased maximum amount

as specified by the person conducting the physical change; or

(ii) For purposes of applying the definition of the term "potential electrical output capacity," starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

NAAQS means National Ambient Air Quality Standard.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Non-EGU means a source of NO_X emissions that is not an EGU.

NO_X Budget Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts A through I of this part and § 51.121, as a means of mitigating interstate transport of ozone and nitrogen oxides.

NO_X SIP Call allowance means a limited authorization issued by the Administrator under the NO_X Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or any year thereafter, provided that the provision in § 51.121(b)(2)(ii)(E) shall not be used in applying this definition.

Ozone season means the period, which begins May 1 and ends September 30 of any year.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or a stationary, fossil-fuel-fired combustion turbine.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

(dd) New Hampshire may revise its SIP to implements control measures on EGUs and non-EGUs through an emissions trading program adopted in regulations that differ substantively from subparts AAAA through IIII of part 96 of this chapter as set forth in this paragraph.

(1) New Hampshire must expand the applicability provisions in § 96.304 of this chapter to include all non-EGUs subject to New Hampshire's emissions trading program at New Hampshire Code of Administrative Rules, chapter Env-A 3200 (2004).

(2) New Hampshire may decline to adopt the CAIR NO_X Ozone Season opt-in provisions of:

(i) Subpart IIII of this part and the provisions applicable only to CAIR NO_X Ozone Season opt-in units in subparts AAAA through HHHH of this part;

(ii) Section 96.388(b) of this chapter and the provisions of subpart IIII of this part applicable only to CAIR NO_X Ozone Season opt-in units under § 96.388(b); or

(iii) Section 96.388(c) of this chapter and the provisions of subpart IIII of this part applicable only to CAIR NO_X Ozone Season opt-in units under § 96.388(c).

(3) New Hampshire may adopt the allocation provisions set forth in subpart EEEE of part 96 of this chapter, provided that New Hampshire must provide for issuance of an amount of CAIR Ozone Season NO_X allowances for an ozone season not exceeding 3,000 tons for 2009 and thereafter;

(4) New Hampshire may adopt any methodology for allocating CAIR NO_X Ozone Season allowances to individual sources, as follows:

(i) New Hampshire's methodology must not allow New Hampshire to allocate CAIR Ozone Season NO_X allowances for an ozone season in excess of 3,000 tons for 2009 and thereafter;

(ii) New Hampshire's methodology must require that, for EGUs commencing operation before January 1, 2001, New Hampshire will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the ozone season in the 4th year after the year of the notification deadline; and

(iii) New Hampshire's methodology must require that, for EGUs commencing operation on or after January 1, 2001, New Hampshire will determine, and notify the Administrator of, each unit's allocation of CAIR Ozone Season NO_X allowances by July 31 of the calendar year of the ozone season for which the CAIR Ozone Season NO_X allowances are allocated.

■ 5. Part 51 is amended by adding § 51.124 to Subpart G to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

(a) Under section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each State identified in paragraph (c) of this

section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting SO_2 in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the fine particles ($PM_{2.5}$) NAAQS.

(b) For each State identified in paragraph (c) of this section, the SIP revision required under paragraph (a) of this section will contain adequate provisions, for purposes of complying with section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), only if the SIP revision contains control measures that assure compliance with the applicable requirements of this section.

(c) The following States are subject to the requirements of this section: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin, and the District of Columbia.

(d)(1) The SIP revision under paragraph (a) of this section must be submitted to EPA by no later than September 11, 2006.

(2) The requirements of appendix V to this part shall apply to the SIP revision under paragraph (a) of this section.

(3) The State shall deliver 5 copies of the SIP revision under paragraph (a) of this section to the appropriate Regional Office, with a letter giving notice of such action.

(e) The State's SIP revision shall contain control measures and demonstrate that they will result in compliance with the State's Annual EGU SO_2 Budget, if applicable, and achieve the State's Annual Non-EGU SO_2 Reduction Requirement, if applicable, for the appropriate periods. The amounts of the State's Annual EGU SO_2 Budget and Annual Non-EGU SO_2 Reduction Requirement shall be determined as follows:

(1)(i) The Annual EGU SO_2 Budget for the State is defined as the total amount of SO_2 emissions from all EGUs in that State for a year, if the State meets the requirements of paragraph (a) of this section by imposing control measures, at least in part, on EGUs. If the State imposes control measures under this section on only EGUs, the Annual EGU SO_2 Budget for the State shall not exceed the amount, during the indicated periods, specified in paragraph (e)(2) of this section.

(ii) The Annual Non-EGU SO_2 Reduction Requirement, if applicable, is defined as the total amount of SO_2 emission reductions that the State demonstrates, in accordance with paragraph (g) of this section, it will achieve from non-EGUs during the appropriate period. If the State meets the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, then the State's Annual Non-EGU SO_2 Reduction Requirement shall equal or exceed, during the appropriate periods, the amount determined in accordance with paragraph (e)(3) of this section.

(iii) If a State meets the requirements of paragraph (a) of this section by imposing control measures on both EGUs and non-EGUs, then:

(A) The Annual Non-EGU SO_2 Reduction Requirement shall equal or exceed the difference between the amount specified in paragraph (e)(2) of this section for the appropriate period and the amount of the State's Annual EGU SO_2 Budget specified in the SIP revision for the appropriate period; and

(B) The Annual EGU SO_2 Budget shall not exceed, during the indicated periods, the amount specified in paragraph (e)(2) of this section plus the amount of the Annual Non-EGU SO_2 Reduction Requirement under paragraph (e)(1)(iii)(A) of this section for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures on only EGUs, the amount of the Annual EGU SO_2 Budget, in tons of SO_2 per year, shall be as follows, for the indicated State for the indicated period:

State	Annual EGU SO_2 budget for 2010–2014 (tons)	Annual EGU SO_2 budget for 2015 and thereafter (tons)
Alabama	157,582	110,307
District of Columbia	708	495
Florida	253,450	177,415
Georgia	213,057	149,140
Illinois	192,671	134,869
Indiana	254,599	178,219
Iowa	64,095	44,866
Kentucky	188,773	132,141
Louisiana	59,948	41,963
Maryland	70,697	49,488
Michigan	178,605	125,024
Minnesota	49,987	34,991
Mississippi	33,763	23,634
Missouri	137,214	96,050
New York	135,139	94,597
North Carolina	137,342	96,139
Ohio	333,520	233,464
Pennsylvania	275,990	193,193
South Carolina	57,271	40,089
Tennessee	137,216	96,051
Texas	320,946	224,662
Virginia	63,478	44,435
West Virginia	215,881	151,117
Wisconsin	87,264	61,085

(3) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the amount of the Annual Non-EGU SO_2 Reduction Requirement, in tons of SO_2 per year, shall be determined, for the State for 2010 and thereafter, by subtracting the amount of the State's Annual EGU SO_2 Budget for the appropriate year, specified in paragraph (e)(2) of this section, from an amount equal to 2 times the State's Annual EGU SO_2 Budget for 2010 through 2014, specified in paragraph (e)(2) of this section.

(f) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (e) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2)(i) If a State elects to impose control measures on EGUs, then those measures must impose an annual SO_2 mass emissions cap on all such sources in the State.

(ii) If a State elects to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose an annual SO_2 mass emissions cap on all such sources in the State.

(iii) If a State elects to impose control measures on non-EGUs other than those described in paragraph (f)(2)(ii) of this section, then those measures must impose an annual SO_2 mass emissions cap on all such sources in the State, or the State must demonstrate why such emissions cap is not practicable, and adopt alternative requirements that ensure that the State will comply with its requirements under paragraph (e) of this section, as applicable, in 2010 and subsequent years.

(g)(1) Each SIP revision that contains control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Annual Non-EGU SO_2 Reduction Requirement under paragraph (e) of this section and are not adopted or implemented by the State, as of May 12, 2005, and are not adopted or implemented by the federal government, as of the date of submission of the SIP revision by the State to EPA.

(2) The demonstration under paragraph (g)(1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP revision requires control measures:

(i) A detailed historical baseline inventory of SO_2 mass emissions from the source category in a representative year consisting, at the State's election, of 2002, 2003, 2004, or 2005, or an average of 2 or more of those years, absent the control measures specified in the SIP revision.

(A) This inventory must represent estimates of actual emissions based on monitoring data in accordance with part 75 of this chapter, if the source category is subject to part 75 monitoring requirements in accordance with part 75 of this chapter.

(B) In the absence of monitoring data in accordance with part 75 of this chapter, actual emissions must be quantified, to the maximum extent practicable, with the same degree of assurance with which emissions are quantified for sources subject to part 75 of this chapter and using source-specific or source-category-specific assumptions that ensure a source's or source category's actual emissions are not overestimated. If a State uses factors to estimate emissions, production or utilization, or effectiveness of controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated.

(C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development and must be consistent with the planning assumptions regarding vehicle miles traveled and other factors current at the time of the SIP development.

(D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates methodologies must be approved by EPA.

(ii) A detailed baseline inventory of SO_2 mass emissions from the source category in the years 2010 and 2015, absent the control measures specified in the SIP revision and reflecting changes in these emissions from the historical baseline year to the years 2010 and 2015, based on projected changes in the production input or output, population, vehicle miles traveled, economic activity, or other factors as applicable to this source category.

(A) These inventories must account for implementation of any control measures that are adopted or implemented by the State, as of May 12, 2005, or adopted or implemented by the federal government, as of the date of submission of the SIP revision by the State to EPA, and must exclude any control measures specified in the SIP revision to meet the SO_2 emissions reduction requirements of this section.

(B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category and must be consistent with both national projections and relevant official planning assumptions, including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are inconsistent with official U.S. Census projections of population or with energy consumption projections contained in the U.S. Department of Energy's most recent Annual Energy Outlook, then the SIP revision must make adjustments to correct the inconsistency or must demonstrate how the official planning assumptions are more accurate.

(C) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline year and 2010 or 2015, as appropriate.

(iii) A projection of SO_2 mass emissions in 2010 and 2015 from the source category assuming the same projected changes as under paragraph (g)(2)(ii) of this section and resulting from implementation of each of the control measures specified in the SIP revision.

(A) These inventories must address the possibility that the State's new control measures may cause production or utilization, and emissions, to shift to unregulated or less stringently regulated sources in the source category in the same or another State, and these inventories must include any such amounts of emissions that may shift to such other sources.

(B) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2010 and 2015 SO_2 emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (g)(2)(iii) of this section for 2010 and 2015, respectively, from the lower of the amounts in paragraph (g)(2)(i) or (g)(2)(ii) of this section for 2010 and 2015, respectively,

may be credited towards the State's Annual Non-EGU SO_2 Reduction Requirement in paragraph (e)(3) of this section for the appropriate period.

(v) Each SIP revision must identify the sources of the data used in each estimate and each projection of emissions.

(h) Each SIP revision must comply with § 51.116 (regarding data availability).

(i) Each SIP revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (e) of this section, as follows:

(1) The SIP revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of SO_2 emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The SIP revision must comply with § 51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the SIP revision contains any transportation control measures, then the SIP revision must comply with § 51.213 (regarding transportation control measures);

(4)(i) If the SIP revision contains measures to control EGUs, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of part 75 of this chapter.

(ii) If the SIP revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of part 75 of this chapter.

(iii) If the SIP revision contains measures to control any other non-EGUs that are not described in paragraph (i)(4)(ii) of this section, then the SIP revision must require such sources to comply with the monitoring, recordkeeping, and reporting provisions of part 75 of this chapter, or the State must demonstrate why such requirements are not practicable and adopt alternative requirements that ensure that the required emissions reductions will be quantified, to the maximum extent practicable, with the same degree of assurance with which emissions are quantified for sources subject to part 75 of this chapter.

(j) Each SIP revision must show that the State has legal authority to carry out the SIP revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Annual EGU SO_2 Budget or the Annual Non-EGU SO_2 Reduction Requirement, as applicable, under paragraph (e) of this section;

(2) Enforce applicable laws, regulations, and standards and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4)(i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (j)(4)(i) of this section available to the public within a reasonable time after being reported and as correlated with any applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation that the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under section 114 of the CAA.

(l)(1) A SIP revision may assign legal authority to local agencies in accordance with § 51.232.

(2) Each SIP revision must comply with § 51.240 (regarding general plan requirements).

(m) Each SIP revision must comply with § 51.280 (regarding resources).

(n) Each SIP revision must provide for State compliance with the reporting requirements in § 51.125.

(o)(1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AAA through III of part 96 of this chapter (CAIR SO_2 Trading Program), incorporates such subparts by reference into its regulations, or adopts regulations that differ substantively from such subparts only as set forth in paragraph (o)(2) of this section, then such emissions trading program in the State's SIP revision is automatically approved as meeting the requirements of paragraph (e) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(2) If a State adopts an emissions trading program that differs substantively from subparts AAA through III of part 96 of this chapter only as follows, then the emissions trading program is approved as set forth in paragraph (o)(1) of this section.

(i) The State may decline to adopt the CAIR SO_2 opt-in provisions of subpart III of this part and the provisions applicable only to CAIR SO_2 opt-in units in subparts AAA through HHH of this part.

(ii) The State may decline to adopt the CAIR SO_2 opt-in provisions of § 96.288(b) of this chapter and the provisions of subpart III of this part applicable only to CAIR SO_2 opt-in units under § 96.288(b).

(iii) The State may decline to adopt the CAIR SO_2 opt-in provisions of § 96.288(c) of this chapter and the provisions of subpart II of this part applicable only to CAIR SO_2 opt-in units under § 96.288(c).

(3) A State that adopts an emissions trading program in accordance with paragraph (o)(1) or (2) of this section is not required to adopt an emissions trading program in accordance with § 96.123 (o)(1) or (2) or (aa)(1) or (2) of this chapter.

(4) If a State adopts an emissions trading program that differs substantively from subparts AAA through III of part 96 of this chapter, other than as set forth in paragraph (o)(2) of this section, then such emissions trading program is not automatically approved as set forth in paragraph (o)(1) or (2) of this section and will be reviewed by the Administrator for approvability in accordance with the other provisions of this section, provided that the SO_2 allowances issued under such emissions trading program shall not, and the SIP revision shall state that such SO_2 allowances shall not, qualify as CAIR SO_2 allowances under any emissions trading program approved under paragraph (o)(1) or (2) of this section.

(p) If a State's SIP revision does not contain an emissions trading program approved under paragraph (o)(1) or (2) of this section but contains control measures on EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a) of this section:

(1) The SIP revision shall provide, for each year that the State has such

obligation, for the permanent retirement of an amount of Acid Rain allowances allocated to sources in the State for that year and not deducted by the Administrator under the Acid Rain Program and any emissions trading program approved under paragraph (o)(1) or (2) of this section, equal to the difference between—

(A) The total amount of Acid Rain allowances allocated under the Acid Rain Program to the sources in the State for that year; and

(B) If the State's SIP revision contains only control measures on EGUs, the State's Annual EGU SO_2 Budget for the appropriate period as specified in paragraph (e)(2) of this section or, if the State's SIP revision contains control measures on EGUs and non-EGUs, the State's Annual EGU SO_2 Budget for the appropriate period as specified in the SIP revision.

(2) The SIP revision providing for permanent retirement of Acid Rain allowances under paragraph (p)(1) of this section must ensure that such allowances are not available for deduction by the Administrator under the Acid Rain Program and any emissions trading program approved under paragraph (o)(1) or (2) of this section.

(q) The terms used in this section shall have the following meanings:

Acid Rain allowance means a limited authorization issued by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during the specified year or any year thereafter, except as otherwise provided by the Administrator.

Acid Rain Program means a multi-State sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to allowances, the determination of the amount of allowances to be initially credited to a source.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

Electric generating unit or *EGU* means:

(1) Except as provided in paragraph (2) of this definition, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (1) of this definition starting on the day on which the unit first no longer qualifies as a cogeneration unit.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Generator means a device that produces electricity.

Maximum design heat input means:

(1) Starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit;

(2)(i) Except as provided in paragraph (2)(ii) of this definition, starting from the completion of any subsequent physical change in the unit resulting in an increase in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such increased maximum amount as specified by the person conducting the physical change; or

(ii) For purposes of applying the definition of the term "potential electrical output capacity," starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

NAAQS means National Ambient Air Quality Standard.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other

deratings), such increased maximum amount as specified by the person conducting the physical change.

Non-EGU means a source of SO_2 emissions that is not an EGU.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or a stationary, fossil-fuel fired combustion turbine.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

■ 6. Part 51 is amended by adding § 51.125 to Subpart G to read as follows:

§ 51.125 Emissions reporting requirements for SIP revisions relating to budgets for SO_2 and NO_X emissions.

(a) For its transport SIP revision under § 51.123 and/or 51.124, each State must submit to EPA SO_2 and/or NO_X emissions data as described in this section.

(1) Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin and the District of Columbia, must report annual (12 months) emissions of SO_2 and NO_X.

(2) Alabama, Arkansas, Connecticut, Deleware, Florida, Illinois, Indinia, Iowa, Kentucky, Lousianna, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin and the District of Columbia must report ozone season (May 1 through September 30) emissions of NO_X.

(b) Each revision must provide for periodic reporting by the State of SO_2 and/or NO_X emissions data as specified in paragraph (a) of this section to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Every-year reporting cycle. As applicable, each revision must provide for reporting of SO_2 and NO_X emissions data every year as follows:

(i) The States identified in paragraph (a)(1) of this section must report to EPA annual emissions data every year from all SO_2 and NO_X sources within the State for which the State specified control measures in its SIP submission under §§ 51.123 and/or 51.124.

(ii) The States identified in paragraph (a)(2) of this section must report to EPA ozone season and summer daily emissions data every year from all NO_X sources within the State for which the State specified control measures in its SIP submission under § 51.123.

(iii) If sources report SO_2 and NO_X emissions data to EPA in a given year pursuant to a trading program approved under § 51.123(o) or § 51.124(o) of this part or pursuant to the monitoring and reporting requirements of 40 CFR part 75, then the State need not provide annual reporting of these pollutants to EPA for such sources.

(2) *Three-year reporting cycle.* As applicable, each plan must provide for triennial (*i.e.*, every third year) reporting of SO_2 and NO_X emissions data from all sources within the State.

(i) The States identified in paragraph (a)(1) of this section must report to EPA annual emissions data every third year from all SO_2 and NO_X sources within the State.

(ii) The States identified in paragraph (a)(2) of this section must report to EPA ozone season and ozone daily emissions data every third year from all NO_X sources within the State.

(3) The data availability requirements in § 51.116 must be followed for all data submitted to meet the requirements of paragraphs (b)(1) and (2) of this section.

(c) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(d) Approval of annual and ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate annual and ozone season emissions along with sufficient information for EPA to verify the calculated value of annual and ozone season emissions.

(e) *Reporting schedules.* (1) Reports are to begin with data for emissions occurring in the year 2008, which is the first year of the 3-year cycle.

(2) After 2008, 3-year cycle reports are to be submitted every third year and every-year cycle reports are to be submitted each year that a triennial report is not required.

(3) States must submit data for a required year no later than 17 months after the end of the calendar year for which the data are collected.

(f) Data reporting procedures are given in subpart A of this part. When submitting a formal NO_X budget emissions report and associated data, States shall notify the appropriate EPA Regional Office.

(g) *Definitions.* (1) As used in this section, "ozone season" is defined as follows:

Ozone season.—The five month period from May 1 through September 30.

(2) Other words and terms shall have the meanings set forth in appendix A of subpart A of this part.

PART 72—PERMITS REGULATION

■ 1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.2 [Amended]

■ 2. Section 72.2 is amended by:

■ a. Amend the definition of "Acid rain emissions limitation" by replacing, in paragraph (1)(i), the words "an affected unit" with the words "the affected units

at a source" and replacing, in paragraph (1)(ii)(C), the words "compliance subaccount for that unit" with the words "compliance account for that source";

■ b. Amend the definition of "Advance allowance" by replacing the word "unit's" with the word "source";

■ c. Amend the definition of "Allocate or allocation" by replacing the words "unit account" with the words "compliance account";

■ d. Amend the definition of "Allowance deduction, or deduct" by replacing the words "compliance subaccount, or future year subaccount," with the words "compliance account" and replacing the words "from an affected unit" with the words "from the affected units at an affected source";

■ e. Amend the definition of "Allowance transfer deadline" by replacing the words "affected unit's compliance subaccount" with the words "an affected source's compliance account" and replacing the words "the unit's" with the words "the source's";

■ f. Amend the definition of "Authorized account representative" by replacing the words "unit account" with the words "compliance account" and replacing the words "affected unit" with the words "affected source and the affected units at the source";

■ g. Amend the definition of "Compliance use date" by replacing the word "unit's" with the word "source's";

■ h. Amend the definition of "Excess emissions" by, in paragraph (1), replacing the words "an affected unit" with the words "the affected units at an affected source" and replacing the words "for the unit" with the words "for the source";

■ i. Amend the definition of "General account" by replacing the words "unit account" with the words "compliance account";

■ j. Amend the definition of "Offset Plan" by replacing the word "unit" with the word "source";

■ k. Amend the definition of "Recordation, record, or recorded" by removing the words "or subaccount";

■ l. Amend the definition of "Source" by replacing the words "under the Act." with the words "under the Act, provided that one or more combustion or process sources that have, under § 74.4(c) of this chapter, a different designated representative than the designated representative for one or more affected utility units at a source shall be treated as being included in a separate source from the source that includes such utility units for purposes of parts 72 through 78 of this chapter, but shall be treated as being included in the same source as the source that includes such utility units for purposes of section 502(c) of the Act."

■ m. Amend the definition of "Spot allowance" by replacing the word "unit's" with the word "source's"; and

■ n. Revise the definition of "Cogeneration unit";

■ o. Add a new definition of "Compliance account"; and

■ p. Remove the definitions of "Compliance subaccount", "Current year subaccount", "Direct Sale Subaccount", "Future year subaccount", and "Unit account".

§ 72.2 Definitions.

* * * * *

Cogeneration unit means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes, through sequential use of energy.

* * * * *

Compliance account means an Allowance Tracking System account, established by the Administrator under § 73.31(a) or (b) of this chapter or § 74.40(a) of this chapter for an affected source and for each affected unit at the source.

* * * * *

§ 72.7 [Amended]

■ 3. Section 72.7 is amended in paragraph (c)(1)(ii), in the first sentence, by replacing the word "unit's Allowance Tracking System account" with the words "compliance account of the source that includes the unit", and by removing the third sentence of paragraph (c)(1)(ii).

§ 72.9 [Amended]

■ 4. Section 72.9 is amended by:

■ a. In paragraph (b)(2), replace the word "unit" with the words "source or unit, as appropriate,";

■ b. In paragraph (c)(1)(i), replace the words "unit's compliance subaccount" with the words "source's compliance account" and replace the words "from the unit" with the words "from the affected units at the source";

■ c. In paragraphs (e)(1) and (e)(2) introductory text, replace the words "an affected unit" with the words "an affected source";

■ d. In paragraph (g)(6), remove the second sentence; and

■ e. In paragraph (h)(2), replace the word "unit" with the word "source" wherever it appears.

§ 72.21 [Amended]

■ 5. Section 72.21 is amended by:

■ a. In paragraph (b)(1), remove the word "affected" wherever it appears; and

■ b. In paragraph (e)(2), replace the words "unit account" with the words "compliance account".

§ 72.24 [Amended]

■ 6. Section 72.24 is amended by removing and reserving paragraphs (a)(5), (a)(7), and (a)(10).

§ 72.40 [Amended]

■ 7–8. Section 72.40 is amended, in paragraph (a)(1), replace the words "unit's compliance subaccount" with the words "compliance account of the source where the unit is located"; remove the words ", or in the compliance subaccount of another affected unit at the source to the extent provided in § 73.35(b)(3),"; and replace the words "from the unit" with the words "from the affected units at the source".

§ 72.72 [Amended]

■ 9. Section 72.72 is amended by:

■ a. In paragraph (a)(1), add the words "or affected source" after the words "affected unit";

■ b. In paragraph (a)(2), add the words "or an affected source's" after the words "affected unit's"; and

■ c. In paragraph (a)(3), add the words "or affected source" after the words "affected unit" whenever they appear.

§ 72.73 [Amended]

■ 10. Section 72.73 is amended in paragraph (b)(2) by replacing the words "the first Acid Rain permit" with the words "an Acid Rain permit".

§ 72.90 [Amended]

■ 11. Section 72.90 is amended by, in paragraph (a), add, after the words "each calendar year", the words "during 1995 through 2005".

§ 72.95 [Amended]

■ 12. Section 72.95 is amended by:

■ a. In the introductory text, replace the words "an affected unit's compliance subaccount" with the words "an affected source's compliance account"; and

■ b. In paragraph (a), replace the words "by the unit" with the words "by the affected units at the source".

§ 72.96 [Amended]

■ 13. Section 72.96 is amended in paragraph (b), by replacing the words "unit"s Allowance Tracking System account" with the words "source's compliance account".

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 73.10 [Amended]

■ 2. Section 73.10 is amended by:
■ a. In paragraph (a), replace the words "unit account for each" with the words "compliance account for each source that includes a" and remove the words "in each future year subaccount"; and
■ b. In paragraphs (b)(1) and (b)(2), replace the words "unit account for each" with the words "compliance account for each source that includes a" and replace the words "in the future year subaccounts representing calendar years" with the words "for the years".

§ 73.27 [Amended]

■ 3. Section 73.27 is amended in paragraphs (c)(3) and (c)(5) by replacing the words "unit's Allowance Tracking System account" with the words "compliance account of the source that includes the unit".

§ 73.30 [Amended]

■ 4. Section 73.30 is amended by:
■ a. In paragraph (a), add the word "compliance" after the word "establish"; replace the words "affected units" with the words "affected sources"; and replace the words "unit's Allowance Tracking System account" with the words "source's compliance account"; and
■ b. In paragraph (b), replace the word "unit" with the word "source" and replace the words "Allowance Tracking System account" with the words "general account".

§ 73.31 [Amended]

■ 5. Section 73.31 is amended by:
■ a. In paragraph (a), replace the words "an Allowance Tracking System account" with the words "a compliance account" and replace the words "each unit" with the words "each source that includes a unit";
■ b. In paragraph (b), replace the words "an Allowance Tracking System account for the unit." with the words "a compliance account for the source that includes the unit, unless the source already has a compliance account."; and
■ c. In paragraph (c)(1)(v), replace the words "Allowance Tracking System account" with the words "general account" and remove the words "I shall abide by any fiduciary responsibilities assigned pursuant to the binding agreement.".

§ 73.32 [Removed and Reserved]

■ 6. Section 73.32 is removed and reserved.

§ 73.33 [Amended]

■ 7. Section 73.33 is amended by removing and reserving paragraphs (b) and (c).

§ 73.34 [Amended]

■ 8. Section 73.34 is amended by:
■ a. Revise paragraphs (a) and (b) to read as set forth below;
■ b. In paragraph (c) introductory text, remove the paragraph heading and replace the words "compliance, current year, and future year" with the words "compliance account and general account".

§ 73.34 Recordation in accounts.

(a) After a compliance account is established under § 73.31(a) or (b), the Administrator will record in the compliance account any allowance allocated to any affected unit at the source for 30 years starting with the later of 1995 or the year in which the compliance account is established and any allowance allocated for 30 years starting with the later of 1995 or the year in which the compliance account is established and transferred to the source with the transfer submitted in accordance with § 73.50. In 1996 and each year thereafter, after Administrator has completed the deductions pursuant to § 73.35(b), the Administrator will record in the compliance account any allowance allocated to any affected unit at the source for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are made) and any allowance allocated for the new 30th year and transferred to the source with the transfer submitted in accordance with § 73.50.

(b) After a general account is established under § 73.31(c), the Administrator will record in the general account any allowance allocated for 30 years starting with the later of 1995 or the year in which the general account is established and transferred to the general account with the transfer submitted in accordance with § 73.50. In 1996 and each year thereafter, after the Administrator has completed the deductions pursuant to § 73.35(b), the Administrator will record in the general account any allowance allocated for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are made) and transferred to the general account with the transfer submitted in accordance with § 73.50.

* * * * *

§ 73.35 [Amended]

■ 9. Section 73.35 is amended by:
■ a. In paragraph (a) introductory text and paragraph (a)(1), replace the words "unit's" with the word "source's";
■ b. In paragraph (a)(2), replace the word "Such" with the word "The";
■ c. In paragraph (a)(2)(i), replace the words "the unit's compliance subaccount" with the words "the source's compliance account";
■ d. In paragraph (a)(2)(ii), replace the words "the unit's compliance subaccount" with the words "the source's compliance account", replace the words "compliance subaccount for the unit" with the words "source's compliance account", and replace the word "or" with the word "and";
■ e. Remove paragraph (a)(2)(iii);
■ f. Add a new paragraph (a)(3);
■ g. In paragraph (b)(1), replace the words "compliance subaccount" with the words "compliance account", add the words "available for deduction under paragraph (a) of this section" after the words "deduct allowances", and replace the words "each affected unit's compliance subaccount" with the words "each affected source's compliance account";
■ h. In paragraph (b)(2), replace the words "allowances remain in the compliance subaccount" with the words "allowances available for deduction under paragraph (a) of this section remain in the compliance account";
■ i. Remove paragraph (b)(3);
■ j. Revise paragraph (c)(1) to read as set forth below;
■ k. In paragraph (c)(2), replace the words "for the unit" with the words "for the units at the source", replace the words "in its compliance subaccount." with the words "in the source's compliance account.", replace the words "from the compliance subaccount" with the words "from the compliance account", and replace the words "unit's compliance subaccount" with the words "source's compliance account";
■ l. In paragraph (d), replace the words "for each unit" with the words "for each source" and replace the word "unit's" with the word "source's"; and
■ m. Remove paragraph (e).

§ 73.35 Compliance.

(a) * * *

(3) The allowance was not previously deducted by the Administrator in accordance with a State SO_2 mass emissions reduction program under § 51.124(o) of this chapter or otherwise permanently retired in accordance with § 51.124(p) of this chapter.

* * * * *

(c)(1) *Identification of allowances by serial number.* The authorized account representative for a source's compliance account may request that specific allowances, identified by serial number, in the compliance account be deducted for a calendar year in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the

Administrator by the allowance transfer deadline for the year and include, in a format prescribed by the Administrator, the identification of the source and the appropriate serial numbers.

* * * * *

§ 73.36 [Amended]

■ 10. Section 73.36 is amended by:
■ a. In paragraph (a), replace the words "Unit accounts." with the words "Compliance accounts." and replace with words "compliance subaccount" with the words "compliance account" whenever they appear; and
■ b. In paragraph (b), replace the words "current year subaccount" with the words "general account." whenever they appear and replace the words "at the end of the current calendar year" with the words "not transferred pursuant to subpart D to another Allowance Tracking System account".

■ 11. Section 73.37 is revised to read as follows:

§ 73.37 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

§ 73.38 [Amended]

■ 12. Section 73.38 is amended by:
■ a. In paragraph (a), replace the words "delete the general account from the Allowance Tracking System." with the words "close the general account."; and
■ b. In paragraph (b), replace the words "for a period of a year or more" with the words "for a 12-month period or longer"; remove the words "in its subaccounts"; replace the words "will notify" with the words "may notify"; remove the words "and eliminated from the Allowance Tracking System"; and remove the last sentence.

§ 73.50 [Amended]

■ 13. Section 73.50 is amended by:
■ a. In paragraph (a), remove the words ", including, but not limited to, transfers of an allowance to and from contemporaneous future year subaccounts, and transfers of an allowance to and from compliance subaccounts and current year subaccounts, and transfers of all allowances allocated for a unit for each calendar year in perpetuity";
■ b. In paragraph (b)(1)(ii), remove the words ", or correct indication on the allowance transfer where a request involves the transfer of the unit's allowance in perpetuity";
■ c. In paragraph (b)(2)(ii), remove the words "Allowance Tracking System" and "under 40 CFR part 73, or any other remedies" and remove the comma after the words "under State or Federal law"; and
■ d. Remove paragraph (b)(3).

§ 73.51 [Removed and Reserved]

■ 14. Section 73.51 is removed and reserved.

§ 73.52 [Amended]

■ 15. Section 73.52 is amended by:
■ a. In paragraph (a) introductory text, remove the words "§ 73.50, § 73.51, and" and add the words "(or longer as necessary to perform a transfer in perpetuity of allowances allocated to a unit)" after the words "five business days";
■ b. Revise paragraphs (a)(1), (a)(2) and (a)(3);
■ c. Remove paragraph (a)(4);
■ d. Revise paragraph (b); and
■ e. Add a new paragraph (c) to read as follows:

§ 73.52 EPA recordation.

(a) * * *

(1) The transfer is correctly submitted under § 73.50;

(2) The transferor account includes each allowance identified by serial number in the transfer; and

(3) If the allowances identified by serial number specified pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, § 74.42 of this chapter, or § 74.47(c) of this chapter, the transfer is in accordance with such limitation.

(b) To the extent an allowance transfer submitted for recordation after the allowance transfer deadline includes allowances allocated for any year before the year in which the allowance transfer deadline occurs, the transfer of such allowance will not be recorded until after completion of the deductions pursuant to § 73.35(b) for year before the year in which the allowance transfer deadline occurs.

(c) Where an allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 73.70 [Amended]

■ 16. Section 73.70 is amended by:
■ a. In paragraph (e), remove the last two sentences.
■ b. In paragraph (f), replace the words "the subaccount" by the words "the Allowance Tracking System account"; and
■ c. In paragraph (i)(1), add the words "source that includes a" after the words "Allowance Tracking System account of each".

PART 74—SULFUR DIOXIDE OPT-INS

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 74.4 [Amended]

■ 2. Section 74.4 is amended by:
■ a. In paragraph (c)(1), replace the words "a combustion or process source that is located" with the words "one or more combustion or process sources that are located", replace the words "such combustion or process source and thereafter, does" with the words "such combustion or process sources and thereafter, do", and replace the words "designate, for such combustion or process source" with the words "designate, for such combustion or process sources"; and
■ b. In paragraph (c)(2), replace the words "the combustion or process source" with the words "the combustion or process sources" whenever they occur and replace the word "meets" with the word "meet" in the first sentence.

§ 74.18 [Amended]

■ 3. Section 74.18 is amended in paragraph (d) by removing the last sentence.

§ 74.40 [Amended]

■ 4. Section 74.40 is amended by:
■ a. In paragraph (a), replace the words "an opt-in account" with the words "a compliance account", replace the words "an account" with the words "a compliance account (unless the source that includes the opt-in source already has a compliance account or the opt-in source has, under § 74.4(c), a different designated representative than the designated representative for the source)", and remove the last sentence.
■ b. In paragraph (b), replace the words "allowance account in the Allowance Tracking System" with the words "compliance account (unless the source that includes the opt-in source already has a compliance account or the opt-in source has, under § 74.4(c), a different designated representative than the designated representative for the source)".

■ 5. Section 74.42 is revised to read as follows:

§ 74.42 Limitation on transfers.

(a) With regard to a transfer request submitted for recordation during the period starting January 1 and ending with the allowance transfer deadline in the same year, the Administrator will not record a transfer of an opt-in

allowance that is allocated to an opt-in source for the year in which the transfer request is submitted or a subsequent year.

(b) With regard to a transfer request during the period starting with the day after an allowance transfer deadline and ending December 31 in the same year, the Administrator will not record a transfer of an opt-in allowance that is allocated to an opt-in source for a year after the year in which the transfer request is submitted.

§ 74.43 [Amended]

■ 6. Section 74.43 is amended by:
■ a. In paragraph (a), remove the words "in lieu of any annual compliance certification report required under subpart I of part 72 of this chapter";
■ b. In paragraph (b)(7), replace the word "At" with the words, "In an annual compliance certification report for a year during 1995 through 2005, at"; and
■ c. In paragraph (b)(8), replace the word "The" with the words, "In an annual compliance certification report for a year during 1995 through 2005, the".

§ 74.44 [Amended]

■ 7. Section 74.44 is amended by:
■ a. In paragraph (c)(1)(ii), remove the words "opt-in source's" and add the words "of the source that includes the opt-in source" after the word "System";
■ b. In paragraphs (c)(2)(iii)(C), (c)(2)(iii)(D), (c)(2)(iii)(E) introductory text, and (c)(2)(iii)(E)(3), replace the words "opt-in source's compliance subaccount" with the words "compliance account of the source that includes the opt-in source" whenever they occur; and
■ c. In paragraph (c)(2)(iii)(F), replace the words "opt-in source's compliance subaccount" with the words "compliance account of the source that includes the opt-in source" and replace the words "source's compliance subaccount" with the words "compliance account of the source that includes the opt-in source".

§ 74.46 [Amended]

■ 8. Section 74.46 is amended by removing and reserving paragraph (b)(2).

§ 74.47 [Amended]

■ 9. Section 74.47 is amended by:
■ a. In paragraph (a)(3)(iv), remove the words "opt-in source's" and add the words "of the source that includes the opt-in source" after the word "System";
■ b. In paragraph (a)(3)(v), replace the word "Each" with the word "The", remove the words "replacement unit's" and "(ATS)", and add the words "of each source that includes a replacement unit" after the word "System";
■ c. In paragraph (a)(6), replace the words "Allowance Tracking System account of each replacement unit" with the words "compliance account of each source that includes a replacement unit";
■ d. In paragraph (c), replace the words "unit account" with the words "compliance account of the source that includes the replacement unit" and replace the words "account in the Allowance Tracking System" with the words "Allowance Tracking System account";
■ e. In paragraph (d)(1)(ii)(C), remove the words "opt-in source's" and "(ATS)" and add the words "of the source that includes the opt-in source" after the word "System";
■ f. In paragraph (d)(1)(ii)(D), replace the words "(ATS) for each" with the words "of each source that includes a";
■ g. In paragraph (d)(2)(i), replace the words "Allowance Tracking System accounts for the opt-in source and for each replacement unit" with the words "compliance account for each source that includes the opt-in source or a replacement unit";
■ h. In paragraph (d)(2)(i)(B), replace the words "Allowance Tracking System account of the opt-in source" with the words "compliance account of the source that includes the opt-in source"; and
■ i. In paragraph (d)(2)(ii), replace the words "Allowance Tracking System accounts for the opt-in source and for each replacement unit" with the words "compliance account for each source that includes the opt-in source or a replacement unit".

§ 74.49 [Amended]

■ 10. Section 74.49 is amended, in paragraph (a) introductory text, by replacing the words "an opt-in source's compliance subaccount" with the words "the compliance account of a source that includes an opt-in source".

§ 74.50 [Amended]

■ 11. Section 74.50 is amended by:
■ a. In paragraph (a)(2) introductory text, add the words "source that includes" after the words "the account of the";
■ b. In paragraph (a)(2)(i), replace the words "opt-in source's compliance subaccount" with the words "the compliance account of the source that includes the opt-in source"; and
■ c. In paragraph (b), replace the words "the opt-in source's unit account" with the words "the compliance account of the source that includes the opt-in source"; and
■ d. In paragraph (d), replace the words "an opt-in source does not hold" with the words "the source that includes the opt-in source does not hold".

PART 77—EXCESS EMISSIONS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 77.3 [Amended]

■ 2. Section 77.3 is amended by:
■ a. In paragraph (a), replace the words "affected unit" with the words "affected source" and replace the word "unit's Allowance Tracking System account" with the words "source's compliance account";
■ b. In paragraphs (b) and (c), replace the word "unit" with the word "source" wherever it appears; and
■ c. In paragraph (d) introductory text and paragraphs (d)(1) and (d)(2), replace the word "unit" with the word "source" whenever it appears;
■ d. In paragraphs (d)(3) and (d)(4), replace the words "unit's Allowance Tracking System account" with the words "source's compliance account's" whenever they appear; and
■ e. In paragraph (d)(5), replace the words "unit's compliance subaccount" with the words "source's compliance account".

§ 77.4 [Amended]

■ 3. Section 77.4 is amended by:
■ a. In paragraph (b)(1), replace the words "unit's compliance subaccount" with the words "source's compliance account"; and
■ b. In paragraphs (c)(1)(ii)(A), (d)(1), (d)(2), (d)(3), (e)(iv), (g)(2)(ii), (g)(3)(ii), and (g)(3)(iii), replace the word "unit" with the word "source"; and
■ c. In paragraph (k)(2), replace the words "unit's compliance subaccount" with the words "source's compliance account" and replace the word "unit" with the word "source".

§ 77.5 [Amended]

■ 4. Section 77.5 is amended by:
■ a. In paragraph (b), replace the words "compliance subaccount" with the words "compliance account";
■ b. In paragraph (c), replace the words ", from the unit's compliance subaccount" with the words "allocated for the year after the year in which the source has excess emissions, from the source's compliance account", and replace the word "unit's" with the word "source's"; and
■ c. Remove paragraph (d).

§ 77.6 [Amended]

■ 5. Section 77.6 is amended by:
■ a. In paragraph (a)(1), add the words "occur at the affected source" after the

words "sulfur dioxide" and replace the words "owners and operators of the affected unit" with the words "owners and operators respectively of the affected source and the affected units at the source or of the affected unit";

■ b. In paragraph (b)(1)(i)(A), replace the word "unit" with the words "source or unit as appropriate"; and

■ c. In paragraphs (b)(3),(c), and (f), replace the word "unit" with the words "source or unit as appropriate".

PART 78—APPEAL PROCEDURES

■ 1. The title of part 78 is revised to read as set forth above.

■ 2. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

§ 78.1 [Amended]

■ 3. Section 78.1 is amended by:

■ a. In paragraph (a)(1), replace the words "parts 72, 73, 74, 75, 76, or 77 of this chapter or part 97 of this chapter" with the words "part 72, 73, 74, 75, 76, or 77 of this chapter, subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, and subparts AAAA through subparts IIII of part 96 of this chapter, or part 97 of this chapter";

■ b. Revise paragraph (b)(2)(i);

■ c. Add new paragraphs (b)(7), (b)(8), and (b)(9) to read as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(2) * * *

(i) The correction of an error in an Allowance Tracking System account;

* * * * *

(7) Under subparts AA through II of part 96 of this chapter,

(i) The decision on the allocation of CAIR NO_X allowances under § 96.141(b)(2) or (c)(2) of this chapter.

(ii) The decision on the deduction of CAIR NO_X allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_X allowances based on the information as adjusted, under § 96.154 of this chapter;

(iii) The correction of an error in a CAIR NO_X Allowance Tracking System account under § 96.156 of this chapter;

(iv) The decision on the transfer of CAIR NO_X allowances under § 96.161 of this chapter;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 96.175 of this chapter.

(8) Under subparts AAA through III of part 96 of this chapter,

(i) The decision on the deduction of CAIR SO_2 allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR SO_2 allowances based on the information as adjusted, under § 96.254 of this chapter;

(ii) The correction of an error in a CAIR SO_2 Allowance Tracking System account under § 97.256 of this chapter;

(iii) The decision on the transfer of CAIR SO_2 allowances under § 96.261 of this chapter;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 96.275 of this chapter.

(9) Under subparts AAAA through IIII of part 96 of this chapter,

(i) The decision on the allocation of CAIR NO_X Ozone Season allowances under § 96.341(b)(2) or (c)(2)of this chapter.

(ii) The decision on the deduction of CAIR NO_X Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_X Ozone Season allowances based on the information as adjusted, under § 96.354 of this chapter;

(iii) The correction of an error in a CAIR NO_X Ozone Season Allowance Tracking System account under § 96.356 of this chapter;

(iv) The decision on the transfer of CAIR NO_X Ozone Season allowances under § 96.361;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 96.375 of this chapter.

* * * * *

§ 78.3 [Amended]

■ 4. Section 78.3 is amended by:

■ a. In paragraph (b)(3)(i), add the words "or the CAIR designated representative or CAIR authorized account representative under paragraph (a)(4), (5), or (6) of this section (unless the CAIR designated representative or CAIR authorized account representative is the petitioner)" after the words "(unless the NO_X authorized account representative is the petitioner)";

■ b. In paragraph (c)(7), replace the words "or part 97 of this chapter, as appropriate" with the words ", subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, subparts AAAA through IIII of part 96 of this chapter, or part 97 of this chapter, as appropriate";

■ c. In paragraph (d)(3), add the words "or on an account certificate of representation submitted by a CAIR designated representative or an application for a general account submitted by a CAIR authorized account representative under subparts AA through II, subparts AAA through III, or subparts AAAA through IIII of part 96 of this chapter" after the words "under the NO_X Budget Trading Program";

■ d. Add new paragraphs (a)(4), (a)(5), (a)(6), (d)(5), (d)(6), and (d)(7) to read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(4) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NO_X Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

(5) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through III of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR SO_2 Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

(6) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAAA through IIII of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR Ozone Season NO_X Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(5) Any provision or requirement of subparts AA through II of part 96 of this chapter, including the standard requirements under § 96.106 of this chapter and any emission monitoring or reporting requirements.

(6) Any provision or requirement of subparts AAA through III of part 96 of this chapter, including the standard requirements under § 96.206 of this

chapter and any emission monitoring or reporting requirements.

(7) Any provision or requirement of subparts AAAA through IIII of part 96 of this chapter, including the standard requirements under § 96.306 of this chapter and any emission monitoring or reporting requirements.

§ 78.4 [Amended]

■ 5. Section 78.4 is amended by adding two new sentences after the fifth sentence in paragraph (a) to read as follows:

§ 78.4 Filings.

(a) * * * Any filings on behalf of owners and operators of a CAIR NO_X, SO_2, or NO_X Ozone Season unit or source shall be signed by the CAIR designated representative. Any filings on behalf of persons with an interest in CAIR NO_X allowances, CAIR SO_2 allowances, or CAIR NO_X Ozone Season allowances in a general account shall be signed by the CAIR authorized account representative. * * *

* * * * *

§ 78.5 [Amended]

■ 6. Section 78.5 is amended, in paragraph (a), by removing the words ", or a claim or error notification was submitted," the words "or in the claim of error notification", and the words "or the period for submitting a claim of error notification".

§ 78.12 [Amended]

■ 7. Section 78.12 is amended by:

■ a. In paragraph (a) introductory text, remove the words ", or to submit a claim of error notification"; and

■ b. In paragraph (a)(2), replace the words "NO_X Budget permit" with the words ", NO_X Budget permit, CAIR permit,".

§ 78.13 [Amended]

■ 8. Section 78.13 is amended by, in paragraph (b), removing the word "also".

PART 96—[AMENDED]

■ 1. Authority citation for Part 96 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

■ 2. Part 96 is amended by adding subparts AA through II, to read as follows:

Subpart AA—CAIR NO_X Annual Trading Program General Provisions

Sec.

Subpart BB—CAIR Designated Representative for CAIR NO_X Sources

Subpart CC—Permits

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

Subpart FF—CAIR NO_X Allowance Tracking System

Subpart GG—CAIR NO_X Allowance Transfers

Subpart HH—Monitoring and Reporting

Subpart II—CAIR NO_X Opt-in Units

Subpart AA—CAIR NO_X Annual Trading Program General Provisions

§ 96.101 Purpose.

This subpart and subparts BB through II establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Annual Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BB through II as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_X Annual Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.102 Definitions.

The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_X allowances issued under subpart EE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit or a new unit set-aside and, with regard to CAIR NO_X allowances issued under § 96.188, the determination by the permitting authority of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit.

Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR NO_X allowance transfer must be submitted for recordation in a CAIR NO_X source's compliance account in order to be used to meet the source's CAIR NO_X emissions limitation for such control period in accordance with § 96.154.

Alternate CAIR designated representative means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB and II of this part, to transfer and otherwise dispose of CAIR NO_X allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_X allowance means a limited authorization issued by the permitting authority under subpart EE of this part or § 96.188 to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) of this chapter shall not be a CAIR NO_X allowance.

CAIR NO_X allowance deduction or *deduct CAIR NO_X allowances* means the permanent withdrawal of CAIR NO_X allowances by the Administrator from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X units at a CAIR NO_X source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_X Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X allowances under the CAIR NO_X Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_X Allowance Tracking System account means an account in the CAIR NO_X Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X allowances.

CAIR NO_X allowances held or *hold CAIR NO_X allowances* means the CAIR NO_X allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_X Allowance Tracking System account.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X emissions limitation means, for a CAIR NO_X source, the tonnage equivalent of the CAIR NO_X allowances available for deduction for the source under § 96.154(a) and (b) for a control period.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 96.304 and a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 96.104 and, except for purposes of § 96.105 and

subpart EE of this part, a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_X Annual Trading Program requirements applicable to a CAIR NO_X source, to each CAIR NO_X unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204 and a CAIR SO_2 opt-in unit under subpart III of this part.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

(1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.105.

(i) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_X unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under § 96.104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 96.184(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.105.

(i) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the

unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_X unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X unit under § 96.104.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 96.184(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_X Allowance Tracking System account, established by the Administrator for a CAIR NO_X source under subpart FF or II of this part, in which any CAIR NO_X allowance allocations for the CAIR NO_X units at the source are initially recorded and in which are held any CAIR NO_X allowances available for use for a control period in order to meet the source's CAIR NO_X emissions limitation in accordance with § 96.154.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2; and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_X units at a CAIR NO_X source during a control period that exceeds the CAIR NO_X emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_X Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion

device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

Monitoring system means any monitoring system that meets the requirements of subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_X emissions limitation means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year.

Operator means any person who operates, controls, or supervises a CAIR NO_X unit or a CAIR NO_X source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_X source or a CAIR NO_X unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_X unit at the source or the CAIR NO_X unit;

(ii) Any holder of a leasehold interest in a CAIR NO_X unit at the source or the CAIR NO_X unit; or

(iii) Any purchaser of power from a CAIR NO_X unit at the source or the CAIR NO_X unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_X unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Annual Trading Program in accordance with subpart CC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CAIR NO_X allowances, the movement of CAIR NO_X allowances by the Administrator into or between CAIR NO_X Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR NO_X allowance, the unique identification number assigned to each CAIR NO_X allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from

electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR NO_X Annual Trading Program pursuant to § 51.123(o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
NO_X—nitrogen oxides.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
mmBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
O_2—oxygen.
ppm—parts per million.
lb—pound.
scfh—standard cubic feet per hour.
SO_2—sulfur dioxide.
H_2O—water.
yr—year.

§ 96.104 Applicability.

The following units in a State shall be CAIR NO_X units, and any source that includes one or more such units shall be a CAIR NO_X source, subject to the requirements of this subpart and subparts BB through HH of this part:

(a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 96.105 Retired unit exemption.

(a)(1) Any CAIR NO_X unit that is permanently retired and is not a CAIR NO_X opt-in unit under subpart II of this part shall be exempt from the CAIR NO_X Annual Trading Program, except for the provisions of this section, § 96.102, § 96.103, § 96.104, § 96.106(c)(4) through (8), § 96.107, and subparts EE through GG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO_X allowances under subpart EE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_X Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.106 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_X source required to have a title V operating permit and each CAIR NO_X unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.122 in accordance with the deadlines specified in § 96.121(a) and (b); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X source required to have a title V operating permit and each CAIR NO_X unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart II of this part, the owners and operators of a CAIR NO_X source that is not otherwise required to have a title V operating permit and each CAIR NO_X unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_X source and such CAIR NO_X unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source and each CAIR NO_X unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_X source with the CAIR NO_X emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under § 96.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X units at the source, as determined in accordance with subpart HH of this part.

(2) A CAIR NO_X unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.170(b)(1),(2), or (5).

(3) A CAIR NO_X allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_X allowance was allocated.

(4) CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Allowance Tracking System accounts in accordance with subpart EE of this part.

(5) A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Annual Trading Program. No provision of the CAIR NO_X Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO_X allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR NO_X unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_X unit.

(d) *Excess emissions requirements.* (1) If a CAIR NO_X source emits nitrogen oxides during any control period in excess of the CAIR NO_X emissions limitation, then:

(i) The owners and operators of the source and each CAIR NO_X unit at the source shall surrender the CAIR NO_X allowances required for deduction under § 96.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(ii) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(2) [Reserved.]

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of

the CAIR NO_X source and each CAIR NO_X unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.113 for the CAIR designated representative for the source and each CAIR NO_X unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Annual Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Annual Trading Program.

(2) The CAIR designated representative of a CAIR NO_X source and each CAIR NO_X unit at the source shall submit the reports required under the CAIR NO_X Annual Trading Program, including those under subpart HH of this part.

(f) *Liability.* (1) Each CAIR NO_X source and each CAIR NO_X unit shall meet the requirements of the CAIR NO_X Annual Trading Program.

(2) Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X source or the CAIR designated representative of a CAIR NO_X source shall also apply to the owners and operators of such source and of the CAIR NO_X units at the source.

(3) Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X unit or the CAIR designated representative of a CAIR NO_X unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_X Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X source or CAIR NO_X unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB—CAIR Designated Representative for CAIR NO_X Sources

§ 96.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.111, each CAIR NO_X source, including all CAIR NO_X units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Annual Trading Program concerning the source or any CAIR NO_X unit at the source.

(b) The CAIR designated representative of the CAIR NO_X source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X units at the source and shall act in accordance with the certification statement in § 96.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X source represented and each CAIR NO_X unit at the source in all matters pertaining to the CAIR NO_X Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Allowance Tracking System account will be established for a CAIR NO_X unit at a source, until the Administrator has received a complete certificate of representation under § 96.113 for a CAIR designated representative of the source and the CAIR NO_X units at the source.

(e)(1) Each submission under the CAIR NO_X Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X source or a CAIR NO_X unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.102, 96.110(a) and (d), 96.112, 96.113, 96.151 and 96.182, whenever the term "CAIR designated representative" is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a CAIR NO_X source or a CAIR NO_X unit is not included in the list of owners and operators in the certificate of representation under § 96.113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_X source or a CAIR NO_X unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.113 amending the list of owners and operators to include the change.

§ 96.113 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_X source, and each CAIR NO_X unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X source and of each CAIR NO_X unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO_X unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR NO_X unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X unit, or where a customer purchases power from a CAIR NO_X unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X unit at the source; and CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X allowances by contract, CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.113 is received by the Administrator.

(b) Except as provided in § 96.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Annual Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate

any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

Subpart CC—Permits

§ 96.120 General CAIR Annual Trading Program permit requirements.

(a) For each CAIR NO_X source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart II of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X source and the CAIR NO_X units at the source covered by the CAIR permit, all applicable CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.121 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_X source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.122 for the source covering each CAIR NO_X unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X unit commences operation.

(b) *Duty to Reapply.* For a CAIR NO_X source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 for the source covering each CAIR NO_X unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_X source;

(b) Identification of each CAIR NO_X unit at the CAIR NO_X source; and

(c) The standard requirements under § 96.106.

§ 96.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from the compliance account of the CAIR NO_X source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X source's title V operating permit or other federally enforceable permit as applicable.

§ 96.124 CAIR permit revisions.

Except as provided in § 96.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

§ 96.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_X allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966

§ 96.141 Timing requirements for CAIR NO_X allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b)(1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X allowance allocations in accordance with paragraph (b)(1) of this section, the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.

(c)(1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under § 96.142(a) and (b), as well as under § 96.142(a), (c), and (d), for the applicable control period will be assumed to be allocated no CAIR NO_X allowances under § 96.142(a), (c), and (d) for the applicable control period.

§ 96.142 CAIR NO_X allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X allowance allocations under paragraph (b) of this section for each CAIR NO_X unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(b)(1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_X units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget under § 96.140 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate CAIR NO_X allowances to each CAIR NO_X unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X unit to the total amount of baseline heat input of all such CAIR NO_X units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X allowances to CAIR NO_X units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X allowances equal to 5 percent for a control period in 2009 through 2013, and 3 percent for a control period in 2014 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.140.

(2) The CAIR designated representative of such a CAIR NO_X unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_X allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X allowances under paragraph (b) of this section. The CAIR NO_X allowance allocation request must be submitted on or before July 1 of the first control period for which the CAIR NO_X allowances are requested and after the date on which the CAIR NO_X unit commences commercial operation.

(3) In a CAIR NO_X allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X allowances in an amount not exceeding the CAIR NO_X unit's total tons of NO_X emissions during the calendar year immediately before such control period.

(4) The permitting authority will review each CAIR NO_X allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after July 1 of the control period, the permitting authority will determine the sum of the CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_X unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X allowances (if any) allocated for the control period to the CAIR NO_X unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_X allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_X unit that was allocated CAIR NO_X allowances under paragraph (b) of this section an amount of CAIR NO_X allowances equal to the total amount of such remaining unallocated CAIR NO_X allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.140, and rounded to the nearest whole allowance as appropriate.

§ 96.143 Compliance supplement pool.

(a) In addition to the CAIR NO_X allowances allocated under § 96.142, the permitting authority may allocate for the control period in 2009 up to the following amount of CAIR NO_X allowances to CAIR NO_X units in the respective State:

State	Compliance supplement pool
Alabama	10,166
District Of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898

(b) For any CAIR NO_X unit in the State that achieves NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_X allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_X unit shall monitor and report the NO_X emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_X unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's

NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with subpart HH of this part.

(c) For any CAIR NO_X unit in the State whose compliance with CAIR NO_X emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_X allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_X unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_X allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_X unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_X allowances requested, the unit's compliance with CAIR NO_X emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_X emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_X allowances to prevent such undue risk.

(d) The permitting authority will review each request under paragraph (b) or (c) of this section submitted by July 1, 2009 and will allocate CAIR NO_X allowances for the control period in 2009 to CAIR NO_X units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_X allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_X allowances not less than the total amount of CAIR NO_X allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate to each CAIR NO_X unit covered by such requests the amount of CAIR NO_X allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_X allowances than the total amount of CAIR NO_X allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate CAIR NO_X allowances to each CAIR NO_X unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

"Unit's allocation" is the number of CAIR NO_X allowances allocated to the unit from the State's compliance supplement pool. Unit's adjusted allocation" is the amount of CAIR NO_X allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section. "State's compliance supplement pool" is the amount of CAIR NO_X allowances in the State's compliance supplement pool. "Total adjusted allocations for all units" is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under paragraph (d)(3) or (4) of this section.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(5) of this section.

Subpart FF—CAIR NO_X Allowance Tracking System

§ 96.150 [Reserved]

§ 96.151 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 96.184(e), upon receipt of a complete certificate of representation under § 96.113, the Administrator will establish a compliance account for the CAIR NO_X source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) *General accounts.* (1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X allowances held in the general account in all matters pertaining to the CAIR NO_X Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.*

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR NO_X allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_X allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_X Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.153 Recordation of CAIR NO_X allowance allocations.

(a) By December 1, 2006, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at a source, as submitted by the permitting authority in accordance with § 96.141(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.141(b), for the control period in 2015.

(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a CAIR NO_X source's compliance account under § 96.154, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.

(d) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) *Serial numbers for allocated CAIR NO_X allowances. When recording the allocation of CAIR NO_X* allowances for a CAIR NO_X unit in a compliance account, the Administrator will assign each CAIR NO_X allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X allowance is allocated.

§ 96.154 Compliance with CAIR NO_X emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_X allowances are available to be deducted for compliance with a source's CAIR NO_X emissions limitation for a control period in a given calendar year only if the CAIR NO_X allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X allowance transfer correctly submitted for recordation under § 96.160 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 96.161, of CAIR NO_X allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_X allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_X units at the source for the control period; or

(2) If there are insufficient CAIR NO_X allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X* allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_X source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_X allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_X allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_X source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_X source or the CAIR NO_X units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) *Administrator's action on submissions.*

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_X Annual Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X allowances from or transfer CAIR NO_X allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.155 Banking.

(a) CAIR NO_X allowances may be banked for future use or transfer in a compliance account or a general

account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X allowance is deducted or transferred under § 96.154, § 96.156, or subpart GG of this part.

§ 96.156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_X Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.157 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.160 for any CAIR NO_X allowances in the account to one or more other CAIR NO_X Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_X allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X allowances into the account under § 96.160 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG—CAIR NO_X Allowance Transfers

§ 96.160 Submission of CAIR NO_X allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_X allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_X allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_X allowance transfer, the Administrator will record a CAIR NO_X allowance transfer by moving each CAIR NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.160; and

(2) The transferor account includes each CAIR NO_X allowance identified by serial number in the transfer.

(b) A CAIR NO_X allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.154 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_X allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X allowance transfer under § 96.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X allowance transfer that fails to meet the requirements of § 96.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X allowance transfer for recordation following notification of non-recordation.

Subpart HH—Monitoring and Reporting

§ 96.170 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.102 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR NO_X unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.102. The owner or operator of a unit that is not a CAIR NO_X unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_X unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_X unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 96.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_X unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR NO_X unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first,

after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_X unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 96.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), for the owner or operator of a CAIR NO_X opt-in unit under subpart II of this part, by the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 96.184(g).

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_X unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.175.

(2) No owner or operator of a CAIR NO_X unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_X unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_X unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.171(d)(3)(i).

§ 96.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_X unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.170(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 96.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12, § 75.17, or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) to determine whether the approval applies under the CAIR NO_X Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 96.170(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission

monitoring system under § 96.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 96.170(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.170(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.173.

(ii) *Certification application.* The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_X Annual Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) *Certification application approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Annual Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority or, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).

(v) *Procedures for loss of certification.* If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved NO_X emission rate (*i.e.*, NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2

concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(5) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.171 for each disapproved monitoring system.

§ 96.173 Notifications.

The CAIR designated representative for a CAIR NO_X unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.174 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 96.110(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR NO_X unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, §§ 96.183 and 96.184(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the NO_X mass emissions data and heat input data for the CAIR NO_X unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008; or

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR NO_X units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Ozone Season Trading Program or CAIR SO_2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are

correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions.

§ 96.175 Petitions.

(a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_X unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b)(1) The CAIR designated representative of a CAIR NO_X unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

(2) The CAIR designated representative of a CAIR NO_X unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart II—CAIR NO_X Opt-in Units

§ 96.180 Applicability.

A CAIR NO_X opt-in unit must be a unit that:

(a) Is located in the State;

(b) Is not a CAIR NO_X unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 96.181 General.

(a) Except as otherwise provided in §§ 96.101 through 96.104, §§ 96.106 through 96.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_X opt-in unit shall be treated as a CAIR NO_X unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_X unit before issuance of a CAIR opt-in permit for such unit.

§ 96.182 CAIR designated representative.

Any CAIR NO_X opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_X units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X units.

§ 96.183 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X opt-in unit in § 96.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.122;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_X unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack, and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.122;

(3) A monitoring plan in accordance with subpart HH of this part;

(4) A complete certificate of representation under § 96.113 consistent with § 96.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X allowances under § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g)).

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_X opt-in unit shall submit a complete CAIR permit application under § 96.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_X Annual Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_X unit under § 96.104, the CAIR NO_X opt-in unit shall remain subject to the requirements for a CAIR NO_X opt-in unit, even if the CAIR designated representative for the CAIR NO_X opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR

opt-in permit under § 96.183 is submitted in accordance with the following:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 96.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Annual Trading Program in accordance with § 96.186.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Annual Trading Program under § 96.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Annual Trading Program under § 96.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraph (b)(1)(ii) of this section and for the control periods under paragraph (b)(2) of this section.

(d) *Baseline NO_X emission rate.* The unit's baseline NO_X emission rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section; or

(3) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for such control period during which the unit has add-on NO_X emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X opt-in unit in § 96.180 and meets the elements certified in § 96.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X opt-in unit in § 96.180 or meets the elements certified in § 96.183(a)(2), the permitting authority will issue a denial of a CAIR NO_X opt-in permit for the unit.

(g) *Date of entry into CAIR NO_X Annual Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X opt-in unit, and a CAIR NO_X unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_X opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under § 96.188(c) and such unit is repowered after its date of entry into the CAIR NO_X Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X opt-in unit replacing the original CAIR NO_X opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X opt-in unit, and the original CAIR NO_X opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_X unit.

§ 96.185 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.122;

(2) The certification in § 96.183(a)(2);

(3) The unit's baseline heat input under § 96.184(c);

(4) The unit's baseline NO_X emission rate under § 96.184(d);

(5) A statement whether the unit is to be allocated CAIR NO_X allowances under § 96.188(c) (subject to the

conditions in §§ 96.184(h) and 96.186(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Annual Trading Program only in accordance with § 96.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart FF or GG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X allowances to or from the compliance account of the source that includes a CAIR NO_X opt-in unit covered by the CAIR opt-in permit.

§ 96.186 Withdrawal from CAIR NO_X Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_X opt-in unit may withdraw from the CAIR NO_X Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR opt-in unit from the CAIR NO_X Annual Trading Program, the CAIR designated representative of the CAIR NO_X opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_X Annual Trading Program under § 96.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_X opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_X Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X opt-in unit must meet the requirement to hold CAIR NO_X allowances under § 96.106(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit CAIR NO_X allowances equal in number to and allocated for the same or a prior control period as any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X opt-in unit may submit a CAIR NO_X allowance transfer for any remaining CAIR NO_X allowances to another CAIR NO_X Allowance Tracking System in accordance with subpart GG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit that the CAIR NO_X opt-in unit's request to withdraw is denied. Such CAIR NO_X opt-in unit shall continue to be a CAIR NO_X opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Annual Trading Program concerning any control periods for which the unit is a CAIR NO_X opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_X opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_X Annual Trading Program.* Once a CAIR NO_X opt-in unit withdraws from the CAIR NO_X Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.183 for such CAIR NO_X opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.184.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X opt-in unit shall not be eligible to withdraw from the CAIR NO_X Annual Trading Program if the CAIR designated representative of the CAIR NO_X opt-in unit requests, and the permitting authority issues a CAIR NO_X opt-in permit providing for, allocation to the CAIR NO_X opt-in unit of CAIR NO_X allowances under § 96.188(c).

§ 96.187 Change in regulatory status.

(a) *Notification.* If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.*

(1) If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, the permitting authority will revise the CAIR NO_X opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.123 as of the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit that becomes a CAIR NO_X unit under § 96.104, CAIR NO_X allowances equal in number to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 96.188 for any control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104; and

(B) If the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 is not December 31, the CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 96.188 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under

§ 96.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X unit that becomes a CAIR NO_X unit under § 96.104 contains the CAIR NO_X allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, the CAIR NO_X opt-in unit will be treated, solely for purposes of CAIR NO_X allowance allocations under § 96.142, as a unit that commences operation on the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 and will be allocated CAIR NO_X allowances under § 96.142.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 is not January 1, the following number of CAIR NO_X allowances will be allocated to the CAIR NO_X opt-in unit (as a CAIR NO_X unit) under § 96.142 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104:

(A) The number of CAIR NO_X allowances otherwise allocated to the CAIR NO_X opt-in unit (as a CAIR NO_X unit) under § 96.142 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.188 NO_X allowance allocations to CAIR NO_X opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 96.184(e), the permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(i) The CAIR NO_X opt-in unit's baseline heat input determined under § 96.184(c); or

(ii) The CAIR NO_X opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(g).

(2) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(i) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.184(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under this paragraph (subject to the conditions in §§ 96.184(h) and 96.186(g)), the permitting authority will allocate to the CAIR NO_X opt-in unit as follows:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_X allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(A) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.184(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(g).

(iii) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_X allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.184(d); or

(C) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* (1) The Administrator will record, in the compliance account of the source that

includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the permitting authority to the CAIR NO_X opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the permitting authority to the CAIR NO_X opt-in unit under paragraph (a)(2) of this section.

■ 3. Part 96 is amended by adding subparts AAA through CCC, adding and reserving subparts DDD and EEE and adding subparts FFF through III to read as follows:

Subpart AAA—CAIR SO_2 Trading Program General Provisions

Sec.
96.201 Purpose.
96.202 Definitions.
96.203 Measurements, abbreviations, and acronyms.
96.204 Applicability.
96.205 Retired unit exemption.
96.206 Standard requirements.
96.207 Computation of time.
96.208 Appeal procedures.

Subpart BBB—CAIR Designated Representative for CAIR SO_2 Sources

96.210 Authorization and responsibilities of CAIR designated representative.
96.211 Alternate CAIR designated representative.
96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
96.213 Certificate of representation.
96.214 Objections concerning CAIR designated representative.

Subpart CCC—Permits

96.220 General CAIR SO_2 Trading Program permit requirements.
96.221 Submission of CAIR permit applications.
96.222 Information requirements for CAIR permit applications.
96.223 CAIR permit contents and term.
96.224 CAIR permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

96.250 [Reserved]
96.251 Establishment of accounts.
96.252 Responsibilities of CAIR authorized account representative.
96.253 Recordation of CAIR SO_2 allowances.
96.254 Compliance with CAIR SO_2 emissions limitation.
96.255 Banking.
96.256 Account error.
96.257 Closing of general accounts.

Subpart GGG—CAIR SO_2 Allowance Transfers

96.260 Submission of CAIR SO_2 allowance transfers.
96.261 EPA recordation.
96.262 Notification.

Subpart HHH—Monitoring and Reporting

96.270 General requirements.
96.271 Initial certification and recertification procedures.
96.272 Out of control periods.
96.273 Notifications.
96.274 Recordkeeping and reporting.
96.275 Petitions.
96.276 Additional requirements to provide heat input data.

Subpart III—CAIR SO_2 Opt-in Units

96.280 Applicability.
96.281 General.
96.282 CAIR designated representative.
96.283 Applying for CAIR opt-in permit.
96.284 Opt-in process.
96.285 CAIR opt-in permit contents.
96.286 Withdrawal from CAIR SO_2 Trading Program.
96.287 Change in regulatory status.
96.288 SO_2 allowance allocations to CAIR SO_2 opt-in units.

Subpart AAA—CAIR SO_2 Trading Program General Provisions

§ 96.201 Purpose.

This subpart and subparts BBB through III establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under section 110 of the Clean Air Act and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBB through III as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR SO_2 Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO_2 Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit and, with regard to CAIR SO_2 allowances issued under § 96.288, the determination by the permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit.

Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with § 96.254.

Alternate CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under

the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB and III of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 96.304 and a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 96.104 and a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO_2 Trading Program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 allowance means a limited authorization issued by the Administrator under the Acid Rain Program, or by a permitting authority under § 96.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 Trading Program as follows:

(1) For one CAIR SO_2 allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 96.254(b);

(2) For one CAIR SO_2 allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 96.254(b); and

(3) For one CAIR SO_2 allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 96.254(b).

An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program or under the provisions of a State implementation plan that is approved under § 51.124(o)(1) or (2) of this chapter shall not be a CAIR SO_2 allowance.

CAIR SO_2 allowance deduction or *deduct CAIR SO_2 allowances* means the permanent withdrawal of CAIR SO_2 allowances by the Administrator from a compliance account in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at a CAIR SO_2 source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO_2 Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO_2 allowances under the Acid Rain Program.

CAIR SO_2 Allowance Tracking System account means an account in the CAIR SO_2 Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO_2 allowances held or *hold CAIR SO_2 allowances* means the CAIR SO_2 allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO_2 Allowance Tracking System account.

CAIR SO_2 emissions limitation means, for a CAIR SO_2 source, the tonnage equivalent of the CAIR SO_2 allowances available for deduction for the source under § 96.254(a) and (b) for a control period.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204 and, except for purposes of § 96.205, a CAIR SO_2 opt-in unit under subpart III of this part.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.205.

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h) or § 96.287(b)(3), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.205.

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such

date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1),(2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h) or § 96.287(b)(3), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO_2 Allowance Tracking System account, established by the Administrator for a CAIR SO_2 source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO_2 source under subpart FFF or III of this part, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with § 96.254.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(4) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO_2 Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of

combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal SO_2 emissions limitation means, with regard to a unit, the lowest SO_2 emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a CAIR SO_2 unit or a CAIR SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;

(ii) Any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or

(iii) Any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO_2 unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with subpart CCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the Administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR SO_2 Trading Program pursuant to § 51.124 (o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any

remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.
CO_2—carbon dioxide.
NO_x—nitrogen oxides.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
mmBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
O_2—oxygen.
ppm—parts per million.
lb—pound.
scfh—standard cubic feet per hour.
SO_2—sulfur dioxide.
H_2O—water.
yr—year.

§ 96.204 Applicability.

The following units in a State shall be CAIR SO_2 units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part:

(a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 96.205 Retired unit exemption.

(a)(1) Any CAIR SO_2 unit that is permanently retired and is not a CAIR SO_2 opt-in unit under subpart III of this part shall be exempt from the CAIR SO_2 Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(4) through (8), § 96.207, and subparts FFF and GGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO_2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.206 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.222 in accordance with the deadlines specified in § 96.221(a) and (b); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO_2 source that is not otherwise required to have a title V operating permit and each CAIR SO_2 unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO_2 source and such CAIR SO_2 unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO_2 source with the CAIR SO_2 emissions limitation under paragraph (c) of this section.

(c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO_2 allowances available for compliance deductions for the control period, as determined in accordance with § 96.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO_2 unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270(b)(1),(2), or (5).

(3) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR SO_2 unit.

(d) *Excess emissions requirements*—(1) If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:

(i) The owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under § 96.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(ii) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(2) [Reserved]

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.213 for the CAIR designated representative for the source and each CAIR SO_2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.213 changing the CAIR designated representative.

(ii) All emissions monitoring information; in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO_2 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program.

(2) The CAIR designated representative of a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR SO_2 Trading Program, including those under subpart HHH of this part.

(f) *Liability.* (1) Each CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 Trading Program.

(2) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 source or the CAIR designated representative of a CAIR SO_2 source shall also apply to the owners and operators of such source and of the CAIR SO_2 units at the source.

(3) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 unit or the CAIR designated representative of a CAIR SO_2 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.208 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO_2 Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR Designated Representative for CAIR SO_2 Sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.211, each CAIR SO_2 source, including all CAIR SO_2 units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO_2 Trading Program concerning the source or any CAIR SO_2 unit at the source.

(b) The CAIR designated representative of the CAIR SO_2 source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO_2 units at the source and shall act in accordance with the certification statement in § 96.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO_2 source represented and each CAIR SO_2 unit at the source in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO_2 Allowance Tracking System account will be established for a CAIR SO_2 unit at a source, until the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR SO_2 units at the source.

(e)(1) Each submission under the CAIR SO_2 Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO_2 source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO_2 source or a CAIR SO_2 unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.202, 96.210(a) and (d), 96.212, 96.213, 96.251, and 96.282, whenever the term "CAIR designated representative" is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a CAIR SO_2 source or a CAIR SO_2 unit

is not included in the list of owners and operators in the certificate of representation under § 96.213, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR SO_2 source or a CAIR SO_2 unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.213 amending the list of owners and operators to include the change.

§ 96.213 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR SO_2 source, and each CAIR SO_2 unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR SO_2 source and of each CAIR SO_2 unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO_2 unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of the owners and operators of the source and of each CAIR SO_2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR SO_2 unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO_2 unit, or where a customer purchases power from a CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO_2 unit at the source; and CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO_2 allowances by contract, CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.213 is received by the Administrator.

(b) Except as provided in § 96.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO_2 Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

Subpart CCC—Permits

§ 96.220 General CAIR SO_2 Trading Program permit requirements.

(a) For each CAIR SO_2 source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR SO_2 source and the CAIR SO_2 units at the source, all applicable CAIR SO_2 Trading Program, CAIR NO_X Annual Trading Program, and CAIR NO_X Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR SO_2 source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.222 for the source covering each CAIR SO_2 unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR SO_2 unit commences operation.

(b) *Duty to Reapply.* For a CAIR SO_2 source required to have a title V operating permit, the CAIR designated

representative shall submit a complete CAIR permit application under § 96.222 for the source covering each CAIR SO_2 unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO_2 source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR SO_2 source;

(b) Identification of each CAIR SO_2 unit at the CAIR SO_2 source; and

(c) The standard requirements under § 96.206.

§ 96.223 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR SO_2 source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO_2 source's title V operating permit or other federally enforceable permit as applicable.

§ 96.224 CAIR permit revisions.

Except as provided in § 96.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

§ 96.250 [Reserved]

§ 96.251 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 96.284(e), upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR SO_2 source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO_2 allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO_2 allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 allowances held

in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.*

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO_2 allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO_2 Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.253 Recordation of CAIR SO_2 allowances.

(a)(1) After a compliance account is established under § 96.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO_2 allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b)(1) After a general account is established under § 96.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the general account any CAIR SO_2 allowance allocated for the new 30th year (*i.e.*, the year that is 30 years after the calendar

year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) *Serial numbers for allocated CAIR SO_2 allowances.* When recording the allocation of CAIR SO_2 allowances issued by a permitting authority under § 96.288, the Administrator will assign each such CAIR SO_2 allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO_2 allowance is allocated.

§ 96.254 Compliance with CAIR SO_2 emissions limitation.

(a) *Allowance transfer deadline.* The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given calendar year only if the CAIR SO_2 allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO_2 allowance transfer correctly submitted for recordation under § 96.260 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deduction for excess emissions for a prior control period under paragraph (d) of this section or for deduction under part 77 of this chapter.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 96.261, of CAIR SO_2 allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO_2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period as follows:

(1) For a CAIR SO_2 source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 96.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 96.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO_2 allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(B) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.

(2) For a CAIR SO_2 source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(ii) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.

(c)(1) *Identification of CAIR SO_2 allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO_2 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR SO_2 allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO_2 allowances that were allocated to any unit for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO_2 allowances that were allocated to any unit for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO_2 allowances that were allocated to any unit for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO_2 source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 96.288), equal to, or exceeding in

accordance with paragraphs (c)(1) and (2) of this section, 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO_2 source or the CAIR SO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO_2 Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.255 Banking.

(a) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under § 96.254, § 96.256, or subpart GGG of this part.

§ 96.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO_2 Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.260 for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO_2 allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO_2 allowances into the account under § 96.260 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG—CAIR SO_2 Allowance Transfers

§ 96.260 Submission of CAIR SO_2 allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO_2 allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b)(1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator."

§ 96.261 EPA recordation.

(a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO_2 allowances allocated to a CAIR SO_2 unit or as provided in paragraph (b) of this section) of receiving a CAIR SO_2 allowance transfer, the Administrator will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.260; and

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer.

(b) A CAIR SO_2 allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO_2 allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR SO_2 allowance transfer under § 96.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation

following notification of non-recordation.

Subpart HHH—Monitoring and Reporting

§ 96.270 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO_2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.202 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR SO_2 unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.202. The owner or operator of a unit that is not a CAIR SO_2 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO_2 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR SO_2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 96.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR SO_2 unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR SO_2 unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR SO_2 unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 96.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner or operator of a CAIR SO_2 opt-in unit under subpart III of this part, by the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 96.284(g).

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO_2 concentration, SO_2 emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(d) *Prohibitions.* (1) No owner or operator of a CAIR SO_2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.275.

(2) No owner or operator of a CAIR SO_2 unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR SO_2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR SO_2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.271(d)(3)(i).

§ 96.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR SO_2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.270(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B and appendix D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 96.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § § 75.16(b)(2)(ii) of this chapter for apportioning the SO_2 mass emissions measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.11 or § 75.16 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.275(a) to determine whether the approval applies under the CAIR SO_2 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO_2 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 96.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 96.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 96.270(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.270(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.273.

(ii) *Certification application.* The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO_2 Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) *Certification application approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO_2 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.272(b).

(v) *Procedures for loss of certification.* If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*2*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*3*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.271 for each disapproved monitoring system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR SO_2 unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.274 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 96.210(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR SO_2 unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 96.283 and 96.284(a).

(c) *Certification applications.* The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.271, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the SO_2 mass emissions data and heat input data for the CAIR SO_2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR SO_2 units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program or CAIR NO_X Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

§ 96.275 Petitions.

(a) The CAIR designated representative of a CAIR SO_2 unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b) The CAIR designated representative of a CAIR SO_2 unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.276 Additional requirements to provide heat input data.

The owner or operator of a CAIR SO_2 unit that monitors and reports SO_2 mass emissions using a SO_2 concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart III—CAIR SO_2 Opt-in Units

§ 96.280 Applicability.

A CAIR SO_2 opt-in unit must be a unit that:

(a) Is located in the State;

(b) Is not a CAIR SO_2 unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHH of this part.

§ 96.281 General.

(a) Except as otherwise provided in §§ 96.201 through 96.204, §§ 96.206 through 96.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO_2 opt-in unit shall be treated as a CAIR SO_2 unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO_2 unit before issuance of a CAIR opt-in permit for such unit.

§ 96.282 CAIR designated representative.

Any CAIR SO_2 opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR SO_2 units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO_2 units.

§ 96.283 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR SO_2 opt-in unit in § 96.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.286(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.222;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR SO_2 unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Is not and, so long as the unit is a CAIR opt-in unit, will not become, an opt-in source under part 74 of this chapter;

(iv) Vents all of its emissions to a stack; and

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.222;

(3) A monitoring plan in accordance with subpart HHH of this part;

(4) A complete certificate of representation under § 96.213 consistent with § 96.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO_2 allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g)).

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR SO_2 opt-in unit shall submit a complete CAIR permit application under § 96.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR SO_2 Trading Program in accordance with § 96.286 or the unit becomes a CAIR SO_2 unit under § 96.204, the CAIR SO_2 opt-in unit shall remain subject to the requirements for a CAIR SO_2 opt-in unit, even if the CAIR designated representative for the CAIR SO_2 opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.283 is submitted in accordance with the following:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO_2 emissions rate and heat input of the unit are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO_2 emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 96.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO_2 Trading Program in accordance with § 96.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO_2 Trading Program under § 96.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the SO_2 emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO_2 Trading Program under § 96.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section.

(d) *Baseline SO_2* emission rate. The unit's baseline SO_2 emission rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO_2 emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section; or

(3) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for such control period during which the unit has add-on SO_2 emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline SO_2 emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 96.280 and meets the elements certified in § 96.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO_2 opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 96.280 or meets the elements certified in § 96.283(a)(2), the permitting authority will issue a denial of a CAIR SO_2 opt-in permit for the unit.

(g) *Date of entry into CAIR SO_2 Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO_2 opt-in unit, and a CAIR SO_2 unit, as of the later of January 1, 2010

or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR SO_2 opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 96.288(c) and such unit is repowered after its date of entry into the CAIR SO_2 Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO_2 opt-in unit replacing the original CAIR SO_2 opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO_2 emission rate as the original CAIR SO_2 opt-in unit, and the original CAIR SO_2 opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR SO_2 unit.

§ 96.285 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.222;

(2) The certification in § 96.283(a)(2);

(3) The unit's baseline heat input under § 96.284(c);

(4) The unit's baseline SO_2 emission rate under § 96.284(d);

(5) A statement whether the unit is to be allocated CAIR SO_2 allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g));

(6) A statement that the unit may withdraw from the CAIR SO_2 Trading Program only in accordance with § 96.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF or GGG of this part or this subpart, every allocation, transfer, or deduction of CAIR SO_2 allowances to or from the compliance account of the source that includes a CAIR SO_2 opt-in unit covered by the CAIR opt-in permit.

§ 96.286 Withdrawal from CAIR SO_2 Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO_2 opt-in unit may withdraw from the CAIR SO_2 Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR opt-in unit from the CAIR SO_2 Trading Program, the CAIR designated representative of the CAIR SO_2 opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO_2 Trading Program under § 96.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR SO_2 opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO_2 Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO_2 opt-in unit must meet the requirement to hold CAIR SO_2 allowances under § 96.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit CAIR SO_2 allowances equal in number to and allocated for the same or a prior control period as any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO_2 units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO_2 opt-in unit may submit a CAIR SO_2 allowance transfer for any remaining CAIR SO_2 allowances to another CAIR SO_2 Allowance Tracking System in accordance with subpart GGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO_2 allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit that the CAIR SO_2 opt-in unit's request to withdraw is denied. Such CAIR SO_2 opt-in unit shall continue to be a CAIR SO_2 opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO_2 opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO_2 opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO_2 Trading Program concerning any control periods for which the unit is a CAIR SO_2 opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR SO_2 opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR SO_2 Trading Program.* Once a CAIR SO_2 opt-in unit withdraws from the CAIR SO_2 Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.283 for such CAIR SO_2 opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.284.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO_2 opt-in unit shall not be eligible to withdraw from the CAIR SO_2 Trading Program if the CAIR designated representative of the CAIR SO_2 opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 96.288(c).

§ 96.287 Change in regulatory status.

(a) *Notification.* If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO_2 opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, the permitting authority will revise the CAIR SO_2 opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.223 as of the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204.

(2)(i) The Administrator will deduct from the compliance account of the source that includes a CAIR SO_2 opt-in unit that becomes a CAIR SO_2 unit under § 96.204, CAIR SO_2 allowances equal in number to and allocated for the same or a prior control period as:

(A) Any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.288 for any control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204; and

(B) If the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 is not December 31, the CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.288 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO_2 unit that becomes a CAIR SO_2 unit under § 96.204 contains the CAIR SO_2 allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, the CAIR SO_2 opt-in unit will be treated, solely for purposes of CAIR SO_2 allowance allocations under § 96.242, as a unit that commences operation on the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 and will be allocated CAIR SO_2 allowances under § 96.242.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 is not January 1, the following number of CAIR SO_2 allowances will be allocated to the CAIR SO_2 opt-in unit (as a CAIR SO_2 unit) under § 96.242 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204:

(A) The number of CAIR SO_2 allowances otherwise allocated to the CAIR SO_2 opt-in unit (as a CAIR SO_2 unit) under § 96.242 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.288 SO_2 allowance allocations to CAIR SO_2 opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 96.284(e), the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO_2 opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline heat input determined under § 96.284(c); or

(ii) The CAIR SO_2 opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g).

(2) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(3) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO_2 emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under this paragraph (subject to the conditions in §§ 96.284(h) and 96.286(g)), the permitting authority will allocate to the CAIR SO_2 opt-in unit as follows:

(1) For each control period in 2010 through 2014 for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d); or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g).

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO_2 emission rate

under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.

(2) For each control period in 2015 and thereafter for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d) multiplied by 10 percent; or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.

(d) *Recordation.* (1) The Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g), and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(2) of this section.

■ 4. Part 96 is amended by adding subparts AAAA through CCCC, adding and reserving subpart DDDD and adding subparts EEEE through IIII to read as follows:

Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

Sec.

Subpart BBBB—CAIR Designated Representative for CAIR NO_X Ozone Season Sources

Subpart CCCC—Permits

Subpart DDDD—[Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

Subpart HHHH—Monitoring and Reporting

Subpart IIII—CAIR NO_X Ozone Season Opt-In Units

Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

§ 96.301 Purpose.

This subpart and subparts BBBB through IIII establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBBB through IIII as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_X Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR NO_X Ozone Season allowances issued under subpart EEEE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit or a new unit set-aside and, with regard to CAIR NO_X Ozone Season allowances issued under § 96.388 or § 51.123(aa)(2)(iii)(A) of this chapter, the determination by the permitting authority of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit.

Allowance transfer deadline means, for a control period, midnight of November 30, if it is a business day, or, if November 30 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR NO_X Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_X Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_X Ozone Season emissions limitation for such control period in accordance with § 96.354.

Alternate CAIR designated representative means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB and IIII of this part, to transfer and otherwise dispose of CAIR NO_X Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season allowance means a limited authorization issued by the permitting authority under subpart EEEE of this part, § 96.388, or § 51.123(aa)(2)(iii)(A), (bb)(2)(iii) or (iv), or (dd)(3) or (4) of this chapter to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Ozone Season Trading Program or a limited authorization issued by the permitting authority for a control period during 2003 through 2008 under the NO_X Budget Trading Program to emit one ton of nitrogen oxides during a control period, provided that the provision in § 51.121(b)(2)(i)(E) of this chapter shall not be used in applying this definition. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that meet the requirements of § 51.121(p) of this chapter or § 51.123(aa)(1) or (2), (and (bb)(1)), (bb)(2), or (dd) of this chapter shall not be a CAIR NO_X Ozone Season allowance.

CAIR NO_X Ozone Season allowance deduction or *deduct CAIR NO_X Ozone Season allowances* means the permanent withdrawal of CAIR NO_X Ozone Season allowances by the Administrator from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_X Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X Ozone Season allowances under the CAIR NO_X Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_X Ozone Season Allowance Tracking System account means an account in the CAIR NO_X Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding,

transferring, or deducting of CAIR NO_X Ozone Season allowances.

CAIR NO_X Ozone Season allowances held or *hold CAIR NO_X Ozone Season allowances* means the CAIR NO_X Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_X Ozone Season Allowance Tracking System account.

CAIR NO_X Ozone Season emissions limitation means, for a CAIR NO_X Ozone Season source, the tonnage equivalent of the CAIR NO_X Ozone Season allowances available for deduction for the source under § 96.354(a) and (b) for a control period.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 96.304 and, except for purposes of § 96.305 and subpart EEEE of this part, a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 96.104 and a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_X Ozone Season Trading Program requirements applicable to a CAIR NO_X Ozone Season source, to each CAIR NO_X Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204 and a CAIR SO_2 opt-in unit under subpart III of this part.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

(1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel. during any year; or

(2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305.

(i) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 96.304 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 96.304.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.384(h) or § 96.387(b)(3), for a CAIR NO_X Ozone Season opt-in unit or

a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 96.384(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.305.

(i) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 96.304 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 96.304.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1),(2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.384(h) or § 96.387(b)(3), for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 96.384(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the source (*e.g.*, repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_X Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_X Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_X Ozone Season allowance allocations for the CAIR NO_X Ozone Season units at the source are initially recorded and in which are held any CAIR NO_X Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_X Ozone Season emissions limitation in accordance with § 96.354.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

Control period or *ozone season* means the period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source during a control period that exceeds the CAIR NO_X Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_X Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

Monitoring system means any monitoring system that meets the requirements of subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_X emissions limitation means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year.

Operator means any person who operates, controls, or supervises a CAIR NO_X Ozone Season unit or a CAIR NO_X Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit;

(ii) Any holder of a leasehold interest in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit; or

(iii) Any purchaser of power from a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_X Ozone Season unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X Ozone Season allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Ozone

Season Trading Program in accordance with subpart CCCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CAIR NO_X Ozone Season allowances, the movement of CAIR NO_X Ozone Season allowances by the Administrator into or between CAIR NO_X Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR NO_X Ozone Season allowance, the unique identification number assigned to each CAIR NO_X Ozone Season allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR NO_X Ozone Season Trading Program pursuant to § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (e.g., space heating or domestic hot water heating); or

(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
$1NO_X$—nitrogen oxides.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
mmBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
O_2—oxygen.
ppm—parts per million.
lb—pound.
scfh—standard cubic feet per hour.
SO_2—sulfur dioxide.
H_2O—water.
yr-year.

§ 96.304 Applicability.

The following units in a State shall be CAIR NO_X Ozone Season units, and any

source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part:

(a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 96.305 Retired unit exemption.

(a)(1) Any CAIR NO_X Ozone Season unit that is permanently retired and is not a CAIR NO_X Ozone Season opt-in unit shall be exempt from the CAIR NO_X Ozone Season Trading Program, except for the provisions of this section, § 96.302, § 96.303, § 96.304, § 96.306(c)(4) through (8), § 96.307, and subparts EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO_X Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_X Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.306 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_X Ozone Season source required to have a title V operating permit and each CAIR NO_X Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.322 in accordance with the deadlines specified in § 96.321(a) and (b); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X Ozone Season source required to have a title V operating permit and each CAIR NO_X Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_X Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_X Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_X Ozone Season source and such CAIR NO_X Ozone Season unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_X Ozone Season source with the CAIR NO_X Ozone Season emissions

limitation under paragraph (c) of this section.

(c) *Nitrogen oxides ozone season emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_X Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO_X Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7).

(3) A CAIR NO_X Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_X Ozone Season allowance was allocated.

(4) CAIR NO_X Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Ozone Season Allowance Tracking System accounts in accordance with subpart EEEE of this part.

(5) A CAIR NO_X Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Ozone Season Trading Program. No provision of the CAIR NO_X Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO_X Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from a CAIR NO_X Ozone Season unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_X Ozone Season unit.

(d) *Excess emissions requirements.* (1) If a CAIR NO_X Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_X Ozone Season emissions limitation, then:

(i) The owners and operators of the source and each CAIR NO_X Ozone Season unit at the source shall surrender the CAIR NO_X Ozone Season allowances required for deduction under § 96.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(ii) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(2) [Reserved]

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.313 for the CAIR designated representative for the source and each CAIR NO_X Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.313 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Ozone Season Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Ozone Season Trading Program.

(2) The CAIR designated representative of a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall submit the reports required under the CAIR NO_X Ozone Season Trading Program, including those under subpart HHHH of this part.

(f) *Liability.* (1) Each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit shall meet the requirements of the CAIR NO_X Ozone Season Trading Program.

(2) Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season source or the CAIR designated representative of a CAIR NO_X Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_X Ozone Season units at the source.

(3) Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season unit or the CAIR designated representative of a CAIR NO_X Ozone Season unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_X Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X Ozone Season source or CAIR NO_X Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.307 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.308 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Ozone Season Trading Program are set forth in part 78 of this chapter.

Subpart BBBB—CAIR Designated Representative for CAIR NO_X Ozone Season Sources

§ 96.310 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.311, each CAIR NO_X Ozone Season source, including all CAIR NO_X Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Ozone Season Trading Program concerning the source or any CAIR NO_X Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR NO_X Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X Ozone Season units at the source and shall act in accordance with the certification statement in § 96.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X Ozone Season source represented and each CAIR NO_X Ozone Season unit at the source in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Ozone Season Allowance Tracking System account will be established for a CAIR NO_X Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 96.313 for a CAIR designated representative of the source and the CAIR NO_X Ozone Season units at the source.

(e)(1) Each submission under the CAIR NO_X Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.311 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.302, 96.310(a) and (d), 96.312, 96.313, 96.351, and 96.382 whenever the term "CAIR designated representative" is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit is not included in the list of owners and operators in the certificate of representation under § 96.313, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.313 amending the list of owners and operators to include the change.

§ 96.313 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include

the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_X Ozone Season source, and each CAIR NO_X Ozone Season unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X Ozone Season source and of each CAIR NO_X Ozone Season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X Ozone Season unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_X Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR NO_X Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X Ozone Season unit, or where a customer purchases power from a CAIR NO_X Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X Ozone Season unit at the source; and CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X Ozone Season allowances by contract, CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.313 is received by the Administrator.

(b) Except as provided in § 96.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Ozone Season Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

Subpart CCCC—Permits

§ 96.320 General CAIR NO_X Ozone Season Trading Program permit requirements.

(a) For each CAIR NO_X Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart IIII of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_X Ozone Season Trading Program, CAIR NO_X Annual Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.321 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_X Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_X Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X Ozone Season unit commences operation.

(b) *Duty to Reapply.* For a CAIR NO_X Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_X Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X Ozone Season source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_X Ozone Season source;

(b) Identification of each CAIR NO_X Ozone Season unit at the CAIR NO_X Ozone Season source; and

(c) The standard requirements under § 96.306.

§ 96.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from the compliance account of the CAIR NO_X Ozone Season source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 96.324 CAIR permit revisions.

Except as provided in § 96.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD—[Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

§ 96.340 State trading budgets.

(a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_X Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

(b) If a permitting authority issues additional CAIR NO_X Ozone Season allowance allocations under § 51.123(aa)(2)(iii)(A) of this chapter, the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_X Ozone Season allowance allocations issued under § 51.123(aa)(2)(iii)(A) of this chapter for the year.

§ 96.341 Timing requirements for CAIR NO_X Ozone Season allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b)(1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X Ozone Season allowance allocations in accordance with paragraph (b)(1), the Administrator will assume that the allocations of CAIR NO_X Ozone Season allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.

(c)(1) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(c), (a), and (d), for the control period in the

year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X Ozone Season allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of CAIR NO_X Ozone Season allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_X Ozone Season unit that would otherwise be allocated CAIR NO_X Ozone Season allowances under § 96.342(a) and (b), as well as under § 96.342(a), (c), and (d), for the applicable control period will be assumed to be allocated no CAIR NO_X Ozone Season allowances under § 96.342(a), (c), and (d) for the applicable control period.

§ 96.342 CAIR NO_X Ozone Season allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_X Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(b)(1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_X Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget under § 96.340 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate CAIR NO_X Ozone Season allowances to each CAIR NO_X Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_X Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X Ozone Season allowances equal to 5 percent for a control period in 2009 through 2013, and 3 percent for a control period in 2014 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.340.

(2) The CAIR designated representative of such a CAIR NO_X Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section. The CAIR NO_X Ozone Season allowance allocation request must be submitted on or before April 1 before the first control period for which the CAIR NO_X Ozone Season allowances are requested and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

(3) In a CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit's total tons of NO_X emissions during the control period immediately before such control period.

(4) The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after April 1 before the control period, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_X Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_X Ozone Season unit that was allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_X Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_X Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

§ 96.350 [Reserved]

§ 96.351 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 96.384(e), upon receipt of a complete certificate of representation under § 96.313, the Administrator will establish a compliance account for the CAIR NO_X Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall

be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.*

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Ozone Season Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_X Ozone Season Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

(a) By December 1, 2006, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at a source, as submitted by the permitting authority in accordance with § 96.341(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority or as determined by the Administrator in

accordance with § 96.341(b), for the control period in 2015.

(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a CAIR NO_X Ozone Season source's compliance account under § 96.354, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.341(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.

(d) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.341(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) *Serial numbers for allocated CAIR NO_X Ozone Season allowances.* When recording the allocation of CAIR NO_X Ozone Season allowances for a CAIR NO_X Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_X Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X Ozone Season allowance is allocated.

§ 96.354 Compliance with CAIR NO_X emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_X Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_X Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_X Ozone Season allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X Ozone Season allowance transfer correctly submitted for recordation under § 96.360 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 96.361, of CAIR NO_X Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_X Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_X Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR NO_X Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X Ozone Season allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_X Ozone Season source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X Ozone Season allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_X Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_X Ozone Season allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_X Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_X Ozone Season source or the CAIR NO_X Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_X Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X Ozone Season allowances from or transfer CAIR NO_X Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.355 Banking.

(a) CAIR NO_X Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X Ozone Season allowance is deducted or transferred under § 96.354, § 96.356, or subpart GG of this part.

§ 96.356 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_X Ozone Season Allowance Tracking System account. Within 10 business

days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.357 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.360 for any CAIR NO_X Ozone Season allowances in the account to one or more other CAIR NO_X Ozone Season Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_X Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X Ozone Season allowances into the account under § 96.360 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

§ 96.360 Submission of CAIR NO_X Ozone Season allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_X Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X Ozone Season allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_X Ozone Season allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.361 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_X Ozone Season allowance transfer, the Administrator will record a CAIR NO_X Ozone Season allowance transfer by moving each CAIR NO_X Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.360; and

(2) The transferor account includes each CAIR NO_X Ozone Season allowance identified by serial number in the transfer.

(b) A CAIR NO_X Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.354 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_X Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.362 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X Ozone Season allowance transfer under § 96.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X Ozone Season allowance transfer that fails to meet the requirements of § 96.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X Ozone Season allowance transfer for recordation following notification of non-recordation.

Subpart HHHH—Monitoring and Reporting

§ 96.370 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.302 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR NO_X Ozone Season unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.302. The owner or operator of a unit that is not a CAIR NO_X Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_X Ozone Season unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_X Ozone Season unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 96.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 96.374(d), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) May 1, 2008, if the compliance date under paragraph (b)(2)(i) is before May 1, 2008.

(3) For the owner or operator of a CAIR NO_X Ozone Season unit that commences operation on or after July 1, 2007 and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 96.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(5) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_X Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 96.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section and solely for purposes of § 96.306(c)(2), for the owner or operator of a CAIR NO_X Ozone Season opt-in unit, by the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 96.384(g).

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_X Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b)(4) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in § 75.74(c)(7) of this chapter or subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(4) of this section.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_X Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.375.

(2) No owner or operator of a CAIR NO_X Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_X Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_X Ozone Season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.371(d)(3)(i).

§ 96.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_X Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.370(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 96.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12, § 75.17, or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.375(a) to determine whether the approval applies

under the CAIR NO_X Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 96.370(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 96.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.370(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.373.

(ii) *Certification application.* The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_X Ozone Season Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) *Certification application approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Ozone Season Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority or, for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a

CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.372(b).

(v) *Procedures for loss of certification.* If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.*, NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.372 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.371 for each disapproved monitoring system.

§ 96.373 Notifications.

The CAIR designated representative for a CAIR NO_X Ozone Season unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.374 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 96.310(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR NO_X Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 96.383 and 96.384(a).

(c) *Certification applications.* The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.371, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR NO_X Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for

such unit for the entire year and shall report the NO_X mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008; or

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008.

(2) If the CAIR NO_X Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in § 75.74(c) of this chapter) and report NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR NO_X Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program or CAIR SO_2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

§ 96.375 Petitions.

(a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_X Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b)(1) The CAIR designated representative of a CAIR NO_X Ozone Season unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

(2) The CAIR designated representative of a CAIR NO_X Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.376 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X Ozone Season unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart IIII—CAIR NO_X Ozone Season Opt-in Units

§ 96.380 Applicability.

A CAIR NO_X Ozone Season opt-in unit must be a unit that:

(a) Is located in the State;

(b) Is not a CAIR NO_X Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 96.381 General.

(a) Except as otherwise provided in §§ 96.301 through 96.304, §§ 96.306

through 96.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_X Ozone Season opt-in unit shall be treated as a CAIR NO_X Ozone Season unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_X Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 96.382 CAIR designated representative.

Any CAIR NO_X Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_X Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X Ozone Season units.

§ 96.383 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X Ozone Season opt-in unit in § 96.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.386 (f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.322;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_X Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.322;

(3) A monitoring plan in accordance with subpart HHHH of this part;

(4) A complete certificate of representation under § 96.313 consistent with § 96.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X Ozone Season allowances under § 96.388(c) (subject to the conditions in §§ 96.384(h) and 96.386(g)).

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_X Ozone Season opt-in unit shall submit a complete CAIR permit application under § 96.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_X Annual Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_X unit under § 96.304, the CAIR NO_X opt-in unit shall remain subject to the requirements for a CAIR NO_X opt-in unit, even if the CAIR designated representative for the CAIR NO_X opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.383 is submitted in accordance with the following:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 96.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Ozone Season Trading Program in accordance with § 96.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section.

(d) *Baseline NO_X emission rate.* The unit's baseline NO_X emission rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_X emissions rate and heat input are monitored and

reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section; or

(3) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for such control period during which the unit has add-on NO_X emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 96.380 and meets the elements certified in § 96.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X Ozone Season opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 96.380 or meets the elements certified in § 96.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR NO_X Ozone Season Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X Ozone Season opt-in unit, and a CAIR NO_X Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_X Ozone Season opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 96.388(c) and such unit is repowered after its date of entry into the CAIR NO_X Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X Ozone Season opt-in unit replacing the original CAIR NO_X Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X Ozone Season opt-in unit, and the original CAIR NO_X Ozone Season opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_X Ozone Season unit.

§ 96.385 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.322;

(2) The certification in § 96.383(a)(2);

(3) The unit's baseline heat input under § 96.384(c);

(4) The unit's baseline NO_X emission rate under § 96.384(d);

(5) A statement whether the unit is to be allocated CAIR NO_X Ozone Season allowances under § 96.388(c) (subject to the conditions in §§ 96.384(h) and 96.386(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Ozone Season Trading Program only in accordance with § 96.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_X Ozone Season opt-in unit covered by the CAIR opt-in permit.

§ 96.386 Withdrawal from CAIR NO_X Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_X Ozone Season opt-in unit may withdraw from the CAIR NO_X Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR opt-in unit from the CAIR NO_X Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_X Ozone Season Trading Program under § 96.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_X Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_X Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X Ozone Season opt-in unit must meet the requirement to hold CAIR NO_X Ozone Season allowances under § 96.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit CAIR NO_X Ozone Season allowances equal in number to and allocated for the same or a prior control period as any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 96.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X Ozone Season opt-in unit may submit a CAIR NO_X Ozone Season allowance transfer for any remaining CAIR NO_X Ozone Season allowances to another CAIR NO_X Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit that the CAIR NO_X Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_X opt-in unit shall continue to be a CAIR NO_X Ozone Season opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_X Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_X Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_X Ozone Season Trading Program.* Once a CAIR NO_X Ozone Season opt-in unit withdraws from the CAIR NO_X Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.383 for such CAIR NO_X Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.384.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_X Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_X opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 96.388(c).

§ 96.387 Change in regulatory status.

(a) *Notification.* If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, the permitting authority will revise the CAIR NO_X Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.323 as of the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit that becomes a CAIR NO_X Ozone Season unit under § 96.304, CAIR NO_X Ozone Season allowances equal in number to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 96.388 for any control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304; and

(B) If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 is not September 30, the CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 96.388 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X Ozone Season unit that becomes a CAIR NO_X Ozone Season unit under § 96.304 contains the CAIR NO_X Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, the CAIR NO_X Ozone Season opt-in unit will be treated, solely for purposes of CAIR NO_X Ozone Season allowance allocations under § 96.342, as a unit that commences operation on the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 and will be allocated CAIR NO_X Ozone Season allowances under § 96.342.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 is not May 1, the following number of CAIR NO_X Ozone Season allowances will be allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 96.342 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304:

(A) The number of CAIR NO_X Ozone Season allowances otherwise allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 96.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a GAIR NO_X Ozone Season unit under § 96.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.388 NO_X allowance allocations to CAIR NO_X Ozone Season opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 96.384(e), the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X Ozone Season opt-in unit enters the

CAIR NO_X Ozone Season Trading Program under § 96.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than July 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X opt-in unit, in accordance with paragraph (b)or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(i) The CAIR NO_X Ozone Season opt-in unit's baseline heat input determined under § 96.384(c); or

(ii) The CAIR NO_X Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g).

(2) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

(i) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.384(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under this paragraph (subject to the conditions in §§ 96.384(h) and 96.386(g)), the permitting authority will allocate to the CAIR NO_X Ozone Season opt-in unit as follows:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

(A) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.384(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g).

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.384(d); or

(C) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* (1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(1) of this section.

(2) By September 1, of the control period in which a CAIR opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g), and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(2) of this section.

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Federal Register

Thursday,
May 12, 2005

Part III

Environmental Protection Agency

40 CFR Parts 51 and 96
Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 96

[OAR–2003–0053; FRL–7885–8]

RIN 2060–AM95

Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, we are proposing to include Delaware and New Jersey in the Clean Air Interstate Rule (CAIR) for fine particles ($PM_{2.5}$), based on a preliminary assessment that they contribute significantly to a downwind State's nonattainment. In the CAIR, we determined that upwind States that contribute 0.2 $\mu g/m^3$ or more to a downwind fine particles ($PM_{2.5}$) nonattainment area are potentially deemed to be contributing significantly to nonattainment. We are proposing here to combine Delaware and New Jersey for purposes of this test. We have tentatively determined that Delaware and New Jersey should be covered by the CAIR for annual sulfur dioxide (SO_2) and nitrogen oxides (NO_X) requirements.

In this proposal, we are not reopening any of the technical aspects of the CAIR final analyses. Rather, we are proposing to augment the analytical approach used in the CAIR by supplementing the air quality step of the contribution analysis.

For a more detailed discussion of the purpose, background, and analytical approach of the CAIR, and for the detailed provisions of the CAIR, see the CAIR final rule which is published in today's **Federal Register**.

DATES: Comments must be received on or before June 27, 2005. A public hearing, if requested, will be held in Washington, DC on May 26, 2005, beginning at 9 a.m.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0053, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0053. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. This Docket Facility is open from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (929) 566–1742, fax (202) 566–1741.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Jan King, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC 27711, telephone (919) 541–5665, e-mail *king.jan@epa.gov*. For legal questions, please contact Steven Silverman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5523, e-mail at *silverman.steven@epa.gov*. For questions regarding air quality analyses, please contact Norm Possiel, U.S. EPA, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Mail Code D243–01, Research Triangle Park, NC 27711, telephone (919) 541–5692, e-mail at *possiel.norm@epa.gov*. For questions regarding the EGU cost analyses, emissions inventories, and budgets, please contact John Robbins, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9390, e-mail at *robbins.john@epa.gov*. For questions regarding statewide emissions inventories, please contact Marc Houyoux, U.S. EPA, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Mail Code D205–01, Research Triangle Park, NC 27711, telephone (919) 541–3649, e-mail at *houyoux.marc@epa.gov*. For questions regarding emissions reporting requirements, please contact Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Mail Code D205–01, Research Triangle Park, NC, 27711, telephone (919) 541–5372, e-mail at *kuykendal.bill@epa.gov*. For questions regarding the model cap and trade programs, please contact Sam Waltzer, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9175, e-mail at

waltzer.sam@epa.gov. For questions regarding analyses required by statutes and executive orders, please contact Linda Chappell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C339–01, Research Triangle Park, NC 27711, telephone (919) 541–2864, e-mail at *chappell.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public Hearing

A public hearing, if requested, will be held in Washington, DC on May 26, 2005 beginning at 9 a.m. If you wish to request a hearing and present testimony or attend the hearing, you should notify, on or before May 19, 2005, Jan King, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC 27711, telephone (919) 541–5665, e-mail *king.jan@epa.gov*. Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket OAR–2003–0053, at the address listed above for submitted comments. The hearing location and schedule, including lists of speakers, will be posted on EPA's webpage at *http://www.epa.gov/cleanairinterstaterule*. A verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the Office of Air and Radiation Docket and Information Center at the address listed for inspection for documents.

If no requests for a public hearing are received by close of business on May 19, 2005, the hearing will be cancelled. The cancellation will be announced on the webpage at the address shown above.

Outline

I. Background

A. Summary of the Clean Air Interstate Rule

In a final rule published in today's **Federal Register**, titled the Clean Air Interstate Rule ("CAIR"), EPA found that certain States must reduce emissions of SO_2 and/or NO_X by certain amounts because those emissions contribute significantly to nonattainment in downwind areas in other States that are not meeting the annual $PM_{2.5}$ national ambient air quality standard (NAAQS), or the 8-hour ozone NAAQS.[1] The CAIR establishes State implementation plan (SIP) requirements for the affected upwind States under Clean Air Act (CAA) section 110(a)(2). The CAA section 110(a)(2)(D) requires SIPs to contain adequate provisions prohibiting air pollutant emissions from sources or activities in those States that contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to a NAAQS. Based on air quality modeling analyses and cost analyses, EPA has concluded in the CAIR that SO_2 and NO_X emissions in certain States in the eastern half of the nation, through the phenomenon of air pollution transport,[2] contribute significantly to nonattainment or interfere with maintenance of the $PM_{2.5}$ and 8-hour ozone NAAQS in another State.[3] This is because NO_X and SO_2 are important precursors of $PM_{2.5}$, and NO_X is an important precursor of ozone. As a result of the CAIR, EPA is requiring SIP revisions in 28 States and the District of Columbia to reduce SO_2 and/or NO_X emissions.

The 23 States along with the District of Columbia that must reduce annual SO_2 and NO_X emissions for the purposes of the $PM_{2.5}$ NAAQS are: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. While we had originally proposed including Delaware and New Jersey in this group based on our initial air quality contribution assessment, subsequent refinement of the emissions estimates and air quality modeling system resulted in their estimated contributions to $PM_{2.5}$ nonattainment being below the final CAIR threshold for inclusion in the $PM_{2.5}$-related requirements.

The 25 States along with the District of Columbia that must reduce NO_X emissions for the purposes of the 8-hour ozone NAAQS are: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

Under CAA section 110 and thus under the CAIR, each State may determine independently which sources to subject to controls, and which control measures to adopt. Our analysis indicated that emissions reductions from electric generating units (EGUs) are

[1] "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule," (69 FR 4566, January 30, 2004) (NPR or January Proposal); "Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule" (69 FR 32684, June 10, 2004) (SNPR or Supplemental Proposal). We summarize major features of that rule here as an aid to the reader. The EPA is not reconsidering any aspect of the CAIR rule and not accepting comment in this proceeding on the promulgated CAIR rule.

[2] In today's final rule, when we use the term "transport" we mean to include the transport of both fine particles ($PM_{2.5}$) and their precursor emissions and/or transport of both ozone and its precursor emissions.

[3] We also found that emissions of SO_2 and NO_X from upwind States in the $PM_{2.5}$ and ozone CAIR regions can interfere with these same downwind receptors' maintenance of each NAAQS.

highly cost effective, and, in the CAIR rule, we encouraged States to adopt these controls. States that do so must place an enforceable limit, or cap, on EGU emissions (see section VII of the CAIR for further discussion). We calculated the amount of each State's EGU emissions cap, or budget, based on reductions that we have determined are highly cost-effective. States may allow their EGUs to participate in an EPA-administered cap and trade program as a way to reduce the cost of compliance, and to provide compliance flexibility. The cap and trade programs are described in more detail in section VIII of the CAIR.

B. What Are the Central Requirements of Today's Proposal?

In today's action, we propose to combine Delaware and New Jersey for purposes of assessing whether that combination is contributing significantly to nonattainment of the $PM_{2.5}$ NAAQS by downwind receptors under section 110(a)(2)(D), and to apply the finding from that combined assessment to each State. Based on presently available air quality modeling results, our tentative assessment is that the combination of the two states does contribute significantly to $PM_{2.5}$ nonattainment in New York County, NY, and possibly to one or more counties in eastern Pennsylvania. Accordingly, we are proposing that Delaware and New Jersey be required under CAA section 110(a)(2)(D) to adopt SIP requirements for addressing annual emissions of the $PM_{2.5}$ precursors NO_X and SO_2. We intend to conduct confirmatory air quality modeling and make the results available through a Notice of Data Availability prior to finalization of this proposal.

Delaware and New Jersey are already subject to the CAIR for purposes of ozone, and must reduce ozone season emissions of NO_X starting in 2009. This proposal would add requirements for control of annual emissions of SO_2 and of NO_X.

We propose to require that SIPs to achieve the required $PM_{2.5}$ emissions reductions be submitted as soon as practicable, but no later than 18 months after the date of signature of the CAIR, *i.e.*, September 11, 2006, the same deadline as in the CAIR rule. We are doing so because we anticipate being able to act quickly on this proposal, and because we believe this is a reasonable amount of time for submission of these States' SIPs. We also believe that there are evident efficiencies in having these reductions occur at the same time as the reductions from other states covered by the CAIR rule for NO_X and SO_2. See also section IV.D below.

As an option for Delaware and New Jersey, should EPA finalize this proposal, we also propose to provide model cap and trade programs for EGUs. We would also administer these programs, which would be governed by rules provided by EPA that Delaware and New Jersey may adopt or incorporate by reference.

II. Summary of EPA's Analytical Approach, Findings, and Final Actions in the Interstate Air Quality Rule [4]

A. How Did EPA Interpret the CAA's Pollution Transport Provisions?

The CAIR is based on the "good neighbor" provision of CAA section 110(a)(2)(D), which requires States to develop SIP provisions assuring that emissions from their sources do not contribute significantly to downwind nonattainment or interfere with maintenance of the NAAQS. We first interpreted this provision and developed a detailed methodology for applying it in the NO_X SIP Call rulemaking (October 27, 1998), which concerned interstate transport of ozone precursors.

As summarized above, the CAIR requires upwind States to submit SIP revisions requiring their sources to eliminate emissions of certain precursors for $PM_{2.5}$ and ozone, to protect downwind nonattainment areas. We developed the CAIR and this proposal relying heavily on the NO_X SIP Call approach. In the NO_X SIP Call, we interpreted section 110(a)(2)(D) to authorize us to determine the amount of emissions in upwind States that "contribute significantly" to downwind nonattainment or "interfere with" downwind maintenance, and to require those States to eliminate that amount of emissions. We recognized that States must retain full authority to choose the sources to control, and the control mechanisms, to achieve those reductions.

In the NO_X SIP Call, we set out several criteria or factors for the "contribute significantly" test, and further indicated that the same criteria should apply to the "interfere with maintenance" provision.[5] The EPA determined the amount of emissions that significantly contribute to downwind nonattainment from sources in a particular upwind State primarily by (i) evaluating, with respect to each upwind State, several air quality related factors, including determining that all emissions from the State have a sufficiently great impact downwind (in the context of the collective contribution nature of the ozone problem); and

(ii) Determining the amount of that State's emissions that can be eliminated through the application of highly cost-effective controls. Before reaching a conclusion, EPA evaluated several secondary, and more general, considerations. These include:

- The consistency of the regional reductions with the attainment needs of the downwind areas with nonattainment problems;
- The overall fairness of the control regimes required of the downwind and upwind areas, including the extent of the controls required or implemented by the downwind and upwind areas;
- General cost considerations, including the relative cost effectiveness of additional downwind controls compared to upwind controls (63 FR 57403).

In the CAIR rulemaking, we utilized much the same interpretation and application of section 110(a)(2)(D) for regulating downwind transport of precursors of ozone and $PM_{2.5}$ as we adopted for the NO_X SIP Call. We adjusted some aspects of the CAIR analytic approaches for various reasons, including the need to account for regulation of a different pollutant ($PM_{2.5}$) with an additional precursor (SO_2). The CAIR's approach to the ozone issue is essentially the same as in the NO_X SIP Call, but applied to more recent data on the relevant air quality and cost factors.

For a more detailed discussion of how we interpreted the CAA pollution transport provisions, see section II of the CAIR in today's **Federal Register**.

B. Which Air Pollutants Did EPA Address in the CAIR and Why?

In section III of the CAIR (add cite), EPA provided the following characterization of the origin and distribution of 8-hour ozone air quality problems: The ozone present at ground level as a principal component of photochemical smog is formed in sunlit conditions through atmospheric reactions of two main classes of precursor compound: Volatile organic compounds (VOCs) and NO_X [mainly nitrogen oxide (NO) and nitrogen dioxide (NO_2)]; and the formation of

[4] We note again that this section is provided for purposes of information, and not to reopen or reconsider any issues discussed in the section.

[5] In the NO_X SIP Call, because the same criteria applied, the discussion of the "contribute significantly to nonattainment" test generally also applied to the "interfere with maintenance" test. However, in the NO_X SIP Call, EPA stated that the "interfere with maintenance" test applied with respect to only the 8-hour ozone NAAQS (63 FR 57379–80).

ozone increases with temperature and sunlight, which is one reason ozone levels are higher during the summer.

In the CAIR, EPA noted that we continue to rely on the assessment of ozone transport made in great depth by the Ozone Transport Assessment Group (OTAG) in the mid-1990s.[6] As indicated in the NO_X SIP Call proposal, the OTAG Regional and Urban Scale Modeling and Air Quality Analysis Work Groups reached the following conclusions:

- Regional NO_X emissions reductions are effective in producing ozone benefits; the more NO_X reduced, the greater the benefit.
- Controls for VOC are effective in reducing ozone locally and are most advantageous to urban nonattainment areas (62 FR 60320, November 7, 1997).

In section III of the CAIR, we summarized key scientific and technical aspects of the occurrence, formation, and origins of $PM_{2.5}$, as well as findings and observations relevant to formulating control approaches for reducing the contribution of transport to fine particle problems. For a detailed discussion of the key concepts and provisional conclusions drawn from the CAIR, see section III of the CAIR published in today's **Federal Register**.

$PM_{2.5}$ in ambient air is a complex mixture of component of different chemical compositions and origins. Based on the understanding of current scientific and technical information, as well as our air quality modeling, as summarized in the CAIR in today's **Federal Register**, we concluded that it was both appropriate and necessary to focus on control of SO_2 and NO_X emissions as the most effective approach to reducing the contribution of interstate transport to $PM_{2.5}$. Current information relating to sources and controls for other components identified in transported $PM_{2.5}$ (carbonaceous particles, ammonium, and crustal materials) does not, at this time, provide an adequate basis for regulating the regional transport of emissions responsible for these $PM_{2.5}$ components (69 FR 4582). For all of these components, the lack of knowledge of and ability to quantify accurately the interstate transport of these components limited our ability to include these components in this rule.

For a more detailed discussion of how we chose which pollutants to regulate, see section III.B.1.a of the final CAIR in the rules section of today's **Federal Register**.

[6] Ozone Transport Assessment Group, OTAG Final Report, 1997.

C. Air Quality Analysis of Ozone and $PM_{2.5}$ Contributions Among States

For the CAIR, we performed State-by-State zero-out modeling to quantify the contribution from emissions in each State to future ozone and $PM_{2.5}$ nonattainment in other States and to determine whether that contribution meets requirements of the "contribute significantly" test. This zero-out modeling technique provides an estimate of downwind impacts by comparing the model predictions from the 2010 base case to the predictions from a run in which all anthropogenic NO_X emissions (in the case of ozone) or all anthropogenic SO_2 and NO_X emissions (in the case of $PM_{2.5}$) are removed from specific States, one State at a time. Counties presently exceeding the ozone or $PM_{2.5}$ NAAQS and forecast to be nonattainment for ozone or $PM_{2.5}$ in the 2010 Base Case were used as receptors for quantifying interstate contributions of ozone and/or $PM_{2.5}$. For each State-by-State zero-out run, we projected the ozone design value or the annual average $PM_{2.5}$ concentration at each receptor. The contribution from an upwind State to nonattainment at a given downwind receptor was determined by calculating difference in ozone or $PM_{2.5}$ concentration between the 2010 Base Case and the zero-out run at that receptor. We followed this process for each State-by-State zero-out run and each receptor, for both ozone and $PM_{2.5}$. For each upwind State, we identified the largest $PM_{2.5}$ contribution from that State to a downwind nonattainment receptor in order to determine the magnitude of the maximum downwind contribution to $PM_{2.5}$ nonattainment from each State. The maximum downwind contribution was our chosen metric for determining whether or not the $PM_{2.5}$ contribution was significant. After considering an updated analysis and public comments, we applied a threshold of 0.2 $\mu g/m^3$ for this determination. For ozone, we applied a multi-metric test of significant contribution. For ozone, we also used a second method of quantifying State-to-State contributions, known as source receptor modeling, in addition to the emissions zero-out approach just described. This contribution analysis is more fully described in section VI of the preamble for the CAIR.

D. Analysis of Highly Cost-Effective Controls and Timeframe for Emissions Reductions

1. Overall Criteria

In section IV.A of the CAIR rulemaking published in today's **Federal Register**, we considered a variety of factors in evaluating the source categories from which highly cost-effective reductions may be available and the level of reduction assumed from that sector. These include:

- The availability of information,
- The identification of source categories emitting relatively large amounts of the relevant emissions,
- The performance and applicability of control measures,
- The cost effectiveness of control measures, and
- Engineering and financial factors that affect the availability of control measures.

We further stated that overall, "We are striving * * * to set up a reasonable balance of regional and local controls to provide a cost-effective and equitable governmental approach to attainment with the NAAQS for fine particles and ozone." These criteria are unaffected by this proposal.

2. Evaluation of Cost Effectiveness and Feasibility

Section IV in the CAIR Notice of Final Rulemaking (NFR) preamble describes EPA's determination of regionwide SO_2 and NO_X control levels. As described in section IV in the CAIR NFR preamble, EPA determined that highly cost-effective emissions reductions may be obtained by controlling EGUs. The EPA determined the amounts of emissions reductions that must be eliminated in upwind States to help downwind States achieve attainment of the $PM_{2.5}$ and ozone NO_X NAAQS, by assuming the application of highly cost-effective control measures to EGUs and determining the emissions reductions that would result.

For CAIR, EPA determined highly cost-effective regionwide amounts of emissions reductions based on, as in the NO_X SIP Call, comparison to reference lists of the cost effectiveness of other regulatory controls. We developed reference lists for both average and marginal cost effectiveness of those other controls. By comparison to the reference lists, EPA determined that the CAIR final (2015) SO_2 and NO_X regionwide control levels are highly cost effective. The EPA also developed marginal cost-effectiveness curves for SO_2 and NO_X abatement at varying levels of stringency, to corroborate its cost-effectiveness determinations.

The EPA determined the interim control levels (commencing in 2009 for NO_X and in 2010 for SO_2) based on evaluating the feasibility of installing the necessary emission control retrofits. Although the interim regionwide control levels were determined based on

feasibility considerations, EPA also evaluated the cost effectiveness of the interim control levels to ensure that they were also highly cost effective.

Section IV.C in the CAIR NFR preamble describes EPA's feasibility analysis, and section IV.A describes our evaluation of highly cost-effective controls. Section V in the CAIR NFR preamble describes the method EPA used to apportion regionwide control levels to the affected States. A technical support document in the CAIR docket entitled "Modeling of Control Costs, Emissions, and Control Retrofits for Cost Effectiveness and Feasibility Analyses" describes EPA's use of the Integrated Planning Model (IPM) for its cost-effectiveness and feasibility analyses. In addition, a technical support document entitled "Boilermaker Labor Analysis for the Final Clean Air Interstate Rule" provides further explanation of EPA's feasibility analyses. Documentation for IPM, as well as IPM output files, are available in the CAIR docket.

3. CAIR Regionwide SO_2 and NO_X Emission Reduction Requirements

The CAIR requires annual SO_2 and NO_X reductions in the District of Columbia and the following 23 States: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. If all affected States choose to implement the CAIR annual SO_2 emission reduction requirements by controlling EGUs, the regionwide annual SO_2 emissions caps that will apply for EGUs in these 23 States and the District of Columbia are 3.6 million tons in 2010 and 2.5 million tons in 2015. If all affected States choose to implement the CAIR annual NO_X emission reduction requirements by controlling EGUs, the regionwide annual NO_X emissions caps that will apply for EGUs in these 23 States and the District of Columbia are 1.5 million tons in 2009 and 1.3 million tons in 2015.

The CAIR does not require annual SO_2 or NO_X emissions reductions in Delaware or New Jersey. However, today EPA is proposing to require annual SO_2 and NO_X reductions in these two States. Proposed annual SO_2 and NO_X budgets for Delaware and New Jersey are presented later in this preamble. If EPA finalizes these proposed annual SO_2 and NO_X budgets for Delaware and New Jersey—and if those States choose to implement their annual emission reduction requirements by controlling EGUs—then the CAIR regionwide EGU caps would be revised to include reduction requirements for these two States. The revised annual SO_2 caps, including Delaware and New Jersey, would be 3.7 million tons in 2010 and 2.6 million tons in 2015. The revised annual NO_X caps, including Delaware and New Jersey, would be 1.5 million tons in 2009 and 1.3 million tons in 2015.

In addition to its annual SO_2 and NO_X emission reduction requirements, the CAIR requires ozone season NO_X emissions reductions in the District of Columbia and the following 25 States: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. If all affected States choose to implement the CAIR ozone season NO_X emission reduction requirements by controlling EGUs, the regionwide ozone season NO_X emissions caps that will apply for EGUs in these 25 States and the District of Columbia are 0.6 million tons in 2009 and 0.5 million tons in 2015.

III. Proposed Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule

A. Why Is EPA Reconsidering the Status of Delaware and New Jersey in the CAIR?

As explained earlier, section 110(a)(2)(D) of the CAA requires States to include in their SIPs adequate provisions prohibiting emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other State. The term "contribute significantly" is not further defined, so in implementing this section we have had to develop an analytical approach to give specific meaning to that term. The underlying logic of the analytical approach used in both the NO_X SIP Call and the CAIR is that the emission reduction efforts needed to reach attainment should be reasonably balanced between the State containing a nonattainment area and upwind States significantly contributing to the nonattainment. In this way, control efforts on one side of a border are not undermined (and even rendered futile) by out-of-State emissions, and highly cost-effective emissions reductions by out-of-State sources which contribute significantly to downwind receptors' nonattainment are achieved. We believe this approach is both efficient and equitable, so that overall costs are less and costs are more fairly distributed than if the burden of reaching attainment were entirely on the State with the nonattainment area.

We are proposing to retain this underlying analytical approach, but to treat Delaware and New Jersey as special cases and as a single geographic area, because of their relatively small size (and correspondingly lower total emissions), because of the relatively high emissions density of these States, because we believe doing so will achieve a result that is more in keeping with the intention of section 110(a)(2)(D), and because doing so will ensure that a State located between an upwind State that significantly contributes to nonattainment in a downwind State, and that downwind State, carries its appropriate emission reduction obligation mandated by section 110(a)(2)(D). Specifically, we propose to combine Delaware and New Jersey for purposes of assessing whether that combination is contributing significantly to nonattainment of the $PM_{2.5}$ NAAQS by downwind receptors under section 110(a)(2)(D), and to apply the finding from that combined assessment to each State.

As stated earlier, the analytical approach used for the CAIR has two parts, the first of which is a test of whether the air quality contribution from one entire State to nonattainment in any part of another State is strong enough to be considered significant, pending consideration of control costs. For ozone, we used a test for this first part which is based on several metrics of air quality contribution, involving absolute magnitude, relative magnitude, and frequency. For $PM_{2.5}$, we used a test with the single criterion of whether the $PM_{2.5}$ air quality contribution from an upwind State to nonattainment in a downwind State, due to total anthropogenic SO_2 and NO_X emissions in the upwind State, was 0.2 $\mu g/m^3$ or more. We believe that this specific form of the analytical approach used in the final CAIR rule has very appropriately identified a set of 23 States and the District of Columbia that should make certain reductions in annual emissions by 2009 for NO_X and by 2010 for SO_2, and larger reductions by 2015 for NO_X and SO_2, in order to avoid contributing significantly to $PM_{2.5}$ nonattainment or interfere with maintenance in other States. Similarly, we believe that the original analytical approach has very appropriately identified a set of 25 States and the District of Columbia that should make certain reductions in ozone season NO_X emissions by 2009, and larger reductions by 2015, in order to avoid contributing significantly to

ozone nonattainment or interfere with maintenance in other States.

In the course of applying that analytical approach, we realized that an upwind State may have relatively low total emissions and thus have a maximum contribution on other States that is below the air quality contribution threshold used in the CAIR, simply because the State is small in geographic area, and yet clearly contributes to a degree to $PM_{2.5}$ nonattainment in downwind States, because the upwind State is located between an even further upwind State that significantly contributes to nonattainment in a downwind State, and the downwind receptor State. Also, Delaware and New Jersey each has substantial emissions for its size. Therefore, excluding Delaware or New Jersey from emission reduction requirements related to $PM_{2.5}$ might prevent the desired balancing of local and upwind controls. Excluding either State could forgo opportunities for highly cost-effective control that would improve air quality in nearby States' nonattainment areas. Ignoring the contributions of Delaware and New Jersey could result in both air quality detriments and cost inefficiencies and inequities.

The EPA considered alternative approaches to addressing this issue. We do not believe it would be appropriate to consider amending or revising the significance critria set forth in the final CAIR notice. Nevertheless, we believe that these two States, which combined represent a significant source of emissions, should not be allowed to fail to meet these tests, in the unique circumstances presented here, solely because of their comparatively small geographic size. We have faced a similar issue with respect to small geographic entities in the NO_X SIP Call, and more recently in CAIR. In the NO_X SIP Call we combined both Delaware and the District of Columbia with Maryland in the contribution analyses, foreshadowing the issues addressed by this proposal. Furthermore, the final CAIR similarly addressed the special case of one small political jurisdiction, the District of Columbia and combined that with Maryland. In all the analysis of air quality contributions for the CAIR, we combined the District of Columbia and Maryland into one unit for purposes of analyzing contributions to nonattainment in other States, because of the small size of the District of Columbia and, hence, its emissions, and its close proximity to Maryland. We applied the finding from this combined analysis to each jurisdiction separately. We did not receive any adverse comment on this approach. Nor did we receive adverse comment in the SIP Call rule regarding combining Delaware, Maryland, and the District of Columbia in the contribution analysis.

The final CAIR's exclusion of Delaware and New Jersey for purposes of $PM_{2.5}$ drew our attention because of features unique to Delaware and New Jersey. Table III–1 presents relevant facts regarding Delaware and New Jersey, and Table III–2 presents similar information for Maryland, New York, and Pennsylvania for comparison. On balance, we believe the most appropriate way to address the factual situation of the issue here is to consider Delaware's and New Jersey's contributions together, as one unit of analysis. Since Delaware and New Jersey are already subject to CAIR for purposes of ozone, the remainder of this discussion focuses on $PM_{2.5}$ considerations.

Delaware and New Jersey are both relatively small in land area; both are smaller than any of the 23 states already subject to CAIR for purposes of $PM_{2.5}$. Portions of both States are urbanized and industrialized, and overall both have a high emissions density, comparable to that of their neighbors.[7] Delaware has an emissions density of 76.1 tons/year per square mile, almost twice that of neighboring Pennsylvania and also higher than that of Maryland, States already linked to downwind nonattainment areas. New Jersey has an emissions density of 46.6 tons/year per square mile, above that of Pennsylvania although somewhat lower than that of Maryland.

Delaware and New Jersey are near major cities where current $PM_{2.5}$ nonattainment affects large populations. Also, both are relatively near to a county or counties in other States that are projected to still be nonattainment for $PM_{2.5}$ in 2010 in the base case. Delaware and New Jersey are also near large markets for electric power in other States subject to CAIR for $PM_{2.5}$, and both are part of the PJM Interconnection electricity grid. Another consideration is the potential for emission increases as a result of emissions shifting from States subject to the $PM_{2.5}$ requirements of CAIR to States not subject to those requirements, *e.g.*, New Jersey and Delaware. The EPA requests comment on whether it is appropriate under section 110(a)(2)(D) to consider this factor in this rulemaking.[8]

Both Delaware and New Jersey lie between upwind States that are now subject to the CAIR for both ozone and $PM_{2.5}$ and downwind receptor $PM_{2.5}$ nonattainment areas that are linked to one or both of those upwind States. Maryland has already been determined to contribute significantly to nonattainment in both Philadelphia and New York City, Pennsylvania has already been determined to contribute significantly to nonattainment in New York City, and New York has been determined to contribute to nonattainment in Lancaster County, Pennsylvania. New Jersey lies between Pennsylvania and New York City, and Delaware lies between Maryland and both Philadelphia and New York City. This means that emissions from Delaware and New Jersey are mixed with the emissions of these other upwind States and arrive together at the downwind nonattainment areas in other States. Moreover, Delaware and New Jersey are closer to these receptors.

Given these highly distinctive facts, considered in conjunction with the data concerning the downwind emissions contributions from New Jersey and Delaware, it is reasonable that Delaware and New Jersey could be viewed as contributing significantly to $PM_{2.5}$ nonattainment in downwind States. We have therefore considered how to determine in an objective way whether they should be formally considered to contribute to $PM_{2.5}$ nonattainment in specific other States and thus whether they incur a section 110(a)(2)(D) obligation. We propose to do this by treating the combination of these two small states as a unit, subjecting that combination to the 0.2 $\mu g/m^3$ threshold for $PM_{2.5}$ air quality contribution used in the original analytical approach for the CAIR. As noted, this is consistent with our approach in the NO_X SIP Call, where Maryland, Delaware, and the District of Columbia were treated as a combined unit. We note also that Delaware and New Jersey lie side-by-side and together form a compact geographic area. In addition, Delaware

[7] By emissions density we mean the total SO_2 and NO_X emissions from each State in tons per year, divided by the geographic area of the State in square miles. For comparing emissions densities for the purposes of contributions to $PM_{2.5}$ nonattainment, we have compared the emissions density expressed in terms of SO_2 plus NO_X emissions per square mile. Such a comparison is a reasonable measure of comparison that is independent of the disparity in the land area size of the two States.

[8] Because electricity generation costs in States subject to the CAIR will in general rise to some degree to cover the cost of new emission controls, there is the possibility that some electrical generation load and the associated emissions may shift to States that remain outside the CAIR. Such shifting may not always occur, because physical factors in the electrical transmission and distribution system, economic factors, or other regulatory requirements may prevent it. The IPM model predicts that increases will occur in Delaware and New Jersey if they are not included under CAIR's $PM_{2.5}$-related requirements.

and New Jersey are both part of the PJM Interconnection, which means they are in a coordinated portion of the electricity grid. We believe this further supports combining them for purposes of this analysis. By combining these two small States we believe the underlying cost-balancing and control program efficiency goals of our original analytical approach can be better met.

Based on the air quality modeling that was done for the CAIR, we propose to find that when treated as a combined unit, Delaware and New Jersey do in fact contribute 0.2 $\mu g/m^3$ or more to $PM_{2.5}$ nonattainment in New York County, NY and may do so in one or more counties in eastern Pennsylvania. The next section of this preamble presents these modeling results.

TABLE III–1.—CONTRIBUTION FACTORS FOR STATES UNDER REVIEW

State	Contribution factors
Delaware	*Land Area of State* 2050 square miles. *Most Affected Downwind Nonattainment Counties* Philadelphia Co., PA. Delaware Co., PA. Lancaster Co., PA. Berks Co., PA. New York Co., NY. *Geography* The Wilmington area, which is the most densely industrialized and populated part of Delaware, lies on or very close to the lines of transport between the Maryland suburbs of the District of Columbia and Philadelphia Co. and Delaware Co. PA, and also on or very close to the lines of transport between Baltimore and the Philadelphia Co. and Delaware Co., PA. The Wilmington area also lies on or very close to the line of transport between these areas of Maryland and New York Co., NY. *2010 Base Emissions of SO_2 plus NO_X* 156,000 tons/year. *SO_2 plus NO_X Emissions Density* 76.1 tons/year per square mile. *Emission Changes* IPM predicts that implementing the CAIR without subjecting Delaware to limits on annual emissions will result in increases in EGU SO_2 emissions of 5,000 tons and 2,000 tons in 2010 and 2015, respectively, and an increase in NO_X emissions of 2,000 tons in 2010 with no increase in 2015.
New Jersey	*Land Area of State* 7510 square miles. *Most Affected Downwind Nonattainment Counties* New York Co., NY. Berks Co., PA. Lancaster Co., PA. *Geography:* Some part of New Jersey lies in the path of transport connecting any source in Pennsylvania to New York Co., NY. *2010 Base Emissions of SO_2 plus NO_X* 350,000 tons/year. *SO_2 Plus NO_X Emissions Density* 46.58 tons/year per square mile. *SO_2 plus NO_X Emission Changes* IPM predicts that implementing the CAIR without subjecting New Jersey to limits on annual emissions will result in increases in EGU SO_2 emissions of 1,000 and 2,000 tons in 2010 and 2015, respectively, and an increase in EGU NO_X emissions of 1,000 tons in 2010 and 2015.

TABLE III–2.—CONTRIBUTION FACTORS FOR NEIGHBORING STATES ALREADY SUBJECT TO THE CAIR, FOR PURPOSES OF COMPARISON TO DELAWARE AND NEW JERSEY

State	Contribution factors
Maryland & DC	*Size of State* *Land Area* 9,740 square miles. *2010 Base Emissions of SO_2 plus NO_X* 631,000 tons/year. *Nearby Downwind Nonattainment Counties with Significant Contribution From This State* Lancaster Co., PA. Berks Co., PA. Philadelphia Co., PA. Delaware Co., PA. New York Co., NY. Union Co., NJ. *SO_2 plus NO_X Emissions Density* 64.8 tons/year per square mile.

TABLE III–2.—CONTRIBUTION FACTORS FOR NEIGHBORING STATES ALREADY SUBJECT TO THE CAIR, FOR PURPOSES OF COMPARISON TO DELAWARE AND NEW JERSEY—Continued

State	Contribution factors
New York	*Size of State* *Land Area* 48,560 square miles. *2010 Base Emissions of SO_2 plus NO_X* 902,400 tons/year. *Nearby Downwind Nonattainment Counties with Significant Contribution From This State* New Haven, CT. Berks Co., PA. Lancaster Co., PA. Philadelphia Co., PA. Delaware Co., PA. Union Co., NJ. *SO_2 plus NO_X Emissions Density* 18.6 tons/year per square mile.
Pennsylvania	*Size of State* *Land Area* 45,360 square miles. *2010 Base Emissions of SO_2 plus NO_X* 1,818,000 tons/year. *Nearby Downwind Nonattainment Counties with Significant Contribution From This State* New York Co., NY. Union Co., NJ. *SO_2 plus NO_X Emissions Density* 40.1 tons/year per square mile.

B. Air Quality Modeling Results

As explained in section II above, the air quality modeling used to assess contributions to $PM_{2.5}$ nonattainment estimated the contribution by individual States by selectively removing anthropogenic emissions of SO_2 and NO_X from one State at a time, and observing how that change in emissions affected $PM_{2.5}$ concentrations in other States. This included separate assessments for New Jersey and Delaware, and did not include any run in which emissions in both states were removed together. Consequently, we do not presently have exactly the same type of air quality modeling analysis for the combination of Delaware and New Jersey as we do for the 23 States already subject to CAIR for purposes of $PM_{2.5}$. We intend to perform such modeling as soon as possible and to make the results available for public comment through a Notice of Data Availability.

However, a tentative assessment is currently possible. Since results are available from the separate air quality model runs that were done for Delaware and New Jersey, we can add (or superimpose) the contributions from the two States on each individual receptor monitor in order to estimate the contribution that would be calculated if the two states were taken as one unit of analysis. While there are non-linear chemical and other atmospheric processes which could make the outcomes of these two approaches somewhat different, we believe the superimposition approach is sufficiently persuasive to support proposing inclusion of both States as significantly contributing to downwind $PM_{2.5}$ nonattainment problems.

Table III–3 presents the superimposition analysis, using detailed contribution results from the air quality analysis for the final CAIR.[9] The table shows that the sum of Delaware's and New Jersey's contributions to $PM_{2.5}$ nonattainment in New York County, New York is 0.21 $\mu g/m^3$ for one of the monitors in that county. We note that this is the result that obtained from using the base case emissions from the two States. In actuality, as previously stated, we estimate, based on the IPM model, that under the final CAIR, which does not require reductions from Delaware and New Jersey for purposes of $PM_{2.5}$, emissions in Delaware and New Jersey will be higher than in this base case. Thus, the actual contribution of Delaware and New Jersey combined and considered as a unit may be higher than the 0.21 $\mu g/m^3$ result shown in the table. As mentioned above, non-linearities in the atmospheric process may also affect the result, in either direction. Based on this analysis, we propose that New Jersey and Delaware taken together as one unit contribute significantly to $PM_{2.5}$ nonattainment in New York County.

Of the several $PM_{2.5}$ nonattainment counties in eastern Pennsylvania that are shown in Table III–3, none have a superimposed contribution from Delaware and New Jersey that is as large as 0.2 $\mu g/m^3$. However, the planned air quality modeling that treats Delaware and New Jersey as a combined unit and that reflects the above mentioned emissions increases as a result of their current exclusion from CAIR may yield a different result.

[9] The Air Quality Technical Support Document provides full details of how the air quality modeling was done and all of the results.

TABLE III–3.—ASSESSMENT OF COMBINED CONTRIBUTION BY DELAWARE AND NEW JERSEY TO $PM_{2.5}$ NONATTAINMENT BASED ON SUPERIMPOSITION OF RESULTS FROM AIR QUALITY MODELING FOR CAIR

Receptor state	Receptor county	$PM_{2.5}$ Contribution from Delaware ($\mu g/m^3$)	$PM_{2.5}$ Contribution from New Jersey ($\mu g/m^3$)	Sum ($\mu g/m^3$)
New York	New York	0.08	0.13	0.21
Pennsylvania	Berks	0.10	0.06	0.16
Pennsylvania	Dauphin	0.07	0.04	0.11
Pennsylvania	Delaware	0.14	0.04	0.18
Pennsylvania	Lancaster	0.12	0.06	0.18
Pennsylvania	Philadelphia	0.14	0.04	0.18
Pennsylvania	York	0.09	0.04	0.13

IV. Proposed Findings and Action

A. Proposed Findings of Significant Contribution for Delaware and New Jersey

We are proposing to find that emissions of the $PM_{2.5}$ precursors SO_2 and NO_X emitted by Delaware and New Jersey contribute significantly to nonattainment of the $PM_{2.5}$ NAAQS in downwind States. Accordingly, we are proposing SIP requirements for these States under section 110(a)(1) to meet the requirements of section 110(a)(2)(D), namely, to contain adequate provisions to prohibit SO_2 and NO_X emissions from sources or activities within the States from "contribut[ing] significantly to nonattainment" of the $PM_{2.5}$ NAAQS in downwind States.

B. SIP Approval Criteria

The CAIR added two new sections to Title 40 of the Code of Federal Regulations, §§ 51.123 and 51.124 containing requirements related to NO_X and SO_2 respectively, which establish the requirement for submission of SIP revisions to comply with the CAIR and the criteria which EPA will use to review these revisions for approval or disapproval. The content of these sections is presented in section VII of the preamble to the CAIR, which appears in the rules section of today's **Federal Register**. Delaware and New Jersey are already subject to the ozone-related provisions of these sections but not to the provisions that relate to $PM_{2.5}$. We propose to amend these two sections to extend the $PM_{2.5}$-related provisions to both States. The practical effect of the proposed amendments will be to subject the States to budgets (if they choose to control large EGUs) for annual emission reduction requirements of NO_X and SO_2.

The proposed NO_X and SO_2 annual and ozone season budgets for New Jersey and Delaware are shown below in Tables IV–1 and IV–2.

TABLE IV–1.—PROPOSED ANNUAL NO_X BUDGETS

[Tons]

Year	Delaware	New Jersey
2009	4,166	12,670
2015	3,472	10,558

TABLE IV–2.—PROPOSED ANNUAL SO_2 BUDGETS

[Tons]

Year	Delaware	New Jersey
2010	22,411	32,392
2015	15,687	22,674

State annual SO_2 budgets for the years 2010–2014 (Phase I) are based on a 50 percent reduction from title IV allocations for all units in the affected State. The State annual budgets for 2015 and beyond (Phase II) are based on a 65 percent reduction from title IV allowances allocated to units in the affected State for SO_2 control.

To calculate annual State NOX budgets, EPA calculated a total "regional" budget for Delaware and New Jersey using the same methodology as in the CAIR. The EPA calculates the regional NO_X budget using the highest heat input for each State for the years 1999–2002, multiplied by 0.15 lb/mmBtu (for 2009) and 0.125 lb/mmBtu (for 2015).

The EPA is proposing to calculate State NO_X budgets through a fuel-adjusted heat-input basis, as is being finalized in the CAIR. State budgets would be determined by multiplying historic heat input data (summed by fuel) by different adjustment factors for the different fuels. These factors reflect for each fuel (coal, gas and oil), the 1999–2002 average emissions by State, summed for the CAIR region, divided by average heat input by fuel by State, summed for the CAIR region. The resulting adjustment factors from this calculation are 1.0 for coal, 0.4 for gas and 0.6 for oil. The factors would reflect the inherently higher emissions rate of coal-fired plants, and consequently the greater burden on coal plants to control emissions. The regional budget is then apportioned to States on a pro-rata basis, based on each State's share of total adjusted average heat input.

The final CAIR annual NO_X cap and trade rule will provide additional incentives for early annual NO_X reductions by creating a Compliance Supplement Pool (CSP) for CAIR States from which they can distribute allowances for early, annual NO_X emissions reductions in the years 2007 and 2008. The CSP functions much like the NO_X SIP Call's CSP. The CSP would be comprised of CAIR annual NO_X allowances of vintage year 2009.

In the final CAIR, EPA apportions a 200,000 ton CSP to all States. The CSP was apportioned based on a State's share of the required emissions reductions (*i.e.*, the difference between their State baseline emissions and their projected emissions under the CAIR). States may distribute these CAIR NO_X allowances to sources based upon either: (1) A demonstration to the State of NO_X emissions reductions in surplus of any existing NO_X emission control requirements; or (2) a demonstration to the State that the facility has a "need" that would affect electricity grid reliability. Sources that wish to receive CAIR CSP allowances based upon a demonstration of surplus emission reductions will be awarded one CAIR annual NO_X allowance for every ton of NO_X emissions reductions. (Should a State receive more requests for allowances than their share of the CAIR CSP, the State would pro-rate the allowance distribution.) Determination of surplus emissions must use emissions data measured using Part 75 monitoring.

The CSP for CAIR States affected by the CAIR NFR has a total of 198,494 CAIR NO_X allowances in addition to the annual CAIR NO_X budgets. If Delaware and New Jersey are part of the final CAIR program, as we propose, they would be allotted an additional 1,503

allowances. Table IV–3 shows the NO_X CSP for New Jersey and Delaware.

TABLE IV–3.—PROPOSED NO_X COMPLIANCE SUPPLEMENT POOL

[Tons]

Delaware	New Jersey
843	660

C. SIP Submittal Deadline

We are also proposing today to require that $PM_{2.5}$ transport SIPs be submitted, under CAA section 110(a)(1), as soon as practicable, but not later than 18 months from the date of signature of the CAIR, *i.e.*, September 11, 2006. Our expectation is that this will be no less than 12 months from the date of promulgation of the present proposal.

We note that this would leave the two States affected by this proposal less time to submit transport SIPs than allowed for States covered by the CAIR rule. There are a number of reasons this result appears to be justifiable. First, Delaware and New Jersey were covered by the initial CAIR proposal for $PM_{2.5}$ precursors, so the States already have been on notice that they might have to submit transport SIPs for $PM_{2.5}$. Moreover, we are proposing here to adopt all of the key features of the initial CAIR proposal, including the same annual SO_2 and NO_X reductions and budgets and the same implementation mechanisms. Again, since these States have been on notice regarding these issues, we believe that less time would be needed to submit transport SIPs. Moreover, as noted, we expect to finalize this proposal within 6 months. If we do so, and if we adopt the proposed SIP submittal deadline, transport SIPs would be required within 12 months of the final action, the same period as provided in the NO_X SIP Call (69 FR 4585).

According to EPA modeling, including New Jersey and Delaware in the annual CAIR program results in only one additional flue gas desulfurization (FGD) unit installation in the two States, *i.e.*, one additional FGD in New Jersey.[10] The EPA modeling shows no additional selective catalytic reduction (SCR) units would be required in the two States.[11] Assuming EPA finalizes this proposal in 6 months (by September 15, 2005) and allows the two States 18 months from signature of the CAIR to submit their SIPs (*i.e.*, due by September 11, 2006), there would be about 40 months remaining for the installation of the one additional FGD required. The EPA estimates 27 months are required to install an FGD. Also, EPA believes sufficient boiler maker labor and other resources exist to support one additional FGD installation by January 1, 2010. Therefore, EPA proposes the above schedule for finalizing and implementing this rule.

For all these reasons, we think it reasonable to propose that Delaware and New Jersey submit $PM_{2.5}$ transport SIPs by September 11, 2006.

D. Emissions Reporting Requirements

In order to provide emissions inventory information that will allow EPA to better monitor the implementation and effects of the CAIR's emissions reductions, EPA incorporated into the CAIR revisions to the pre-existing emission inventory reporting requirements applicable to States affected by the CAIR. Those requirements were specific to whether a State was affected by the annual emission reduction requirements for SO_2 and NO_X or only the ozone-season reduction requirements for NO_X. Because we are proposing to apply the annual emissions reduction requirements to Delaware and New Jersey, we are also proposing to place these two States under the corresponding provisions of the emissions reporting requirements. The only practical effect of this change relative to existing requirements is that if either State chooses to obtain some of the required annual emissions reductions from a source which emits less than 2500 tons/year of both SO_2 and NO_X and that source is not also made subject to the EPA-operated emissions trading programs, the State must report the annual emissions of that source to EPA annually in contrast to the triennial requirement that presently applies to such sources.

V. Expected Effects of the Proposed Action

A. Emissions

EPA has conducted power sector analysis of The CAIR using the IPM. The IPM is a dynamic linear programming model that can be used to examine air pollution control policies for SO_2 and NO_X throughout the contiguous United States for the entire power system. Documentation for IPM can be found at *www.epa.gov/airmarkets/epa-ipm*.

Emissions of SO_2 and NO_X in the CAIR region would be higher under the final CAIR where Delaware and New Jersey are only included in a summer season ozone cap, similar to Connecticut and Massachusetts. If these two States are included as part of the annual SO_2 and NO_X caps for the CAIR as proposed in this proposal, emissions in the region would be reduced by another 48,000 tons of SO_2 and 11,000 tons of NO_X from the final CAIR scenario.

The inclusion of Delaware and New Jersey in the annual CAIR requirements would result in additional reductions of SO_2 and NO_X that would help in achieving attainment for downwind States.

TABLE V–1.—ANNUAL EMISSIONS FROM AFFECTED SOURCES FOR THE CAIR REGION[12]

[Thousand tons]

	2010	2015		
		SO_2	NO_X	SO_2
Base Case	8,868	2,826	8,056	2,853
Final CAIR (DE and NJ Included for Ozone Season NO_X Only)	5,336	1,592	4,216	1,342
CAIR Modified By This Proposal (DE and NJ Included for Annual SO_2 and NO_X)	5,305	1,582	4,168	1,331
Difference between CAIR Scenarios	32	10	48	11

Note: Numbers may not add due to rounding.

[10] The EPA compared IPM runs with and without New Jersey and Delaware to make this determination. See IPM runs in the docket for further details.

[11] The EPA compared IPM runs with and without New Jersey and Delaware to make this determination. See IPM runs in the docket for further details.

[12] The CAIR region for purposes of this table includes the following States: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

B. Air Quality

Section VI of the preamble to the CAIR, which appears in the rules section of today's **Federal Register**, describes the air quality modeling performed to determine the projected impacts of the CAIR on $PM_{2.5}$ and 8-hour ozone of the SO_2 and NO_X emissions reductions in the control region modeled. The modeling used to estimate the air quality impact of these reductions assumed annual SO_2 and NO_X controls for Arkansas, Delaware, and New Jersey (as had been proposed before completion of the final contribution analysis) in addition to the 23-States plus the District of Columbia. Since Arkansas, Delaware, and New Jersey are not included in the final CAIR $PM_{2.5}$ region, the modeled estimated impacts are overstated for today's final CAIR which excludes all three States from the CAIR region for PM. Because we are now proposing that Delaware and New Jersey become subject to the $PM_{2.5}$-related emissions limits for SO_2 and NO_X, the air quality modeling for the final CAIR better approximates the net effects of the CAIR plus today's proposal, but still overestimates the air quality changes somewhat due to the continued discrepancy regarding Arkansas. The Regulatory Impact Analysis for the CAIR discusses these differences in scenarios in more detail.

The EPA analyzed the impacts of the regional emissions reductions in both 2010 and 2015. These impacts are quantified by comparing air quality modeling results for the regional control scenario to the modeling results for the corresponding 2010 and 2015 Base Case scenarios. The 2010 and 2015 emissions reductions and air quality improvements from the regional control strategy modeled are presented in summary form in section VI of the preamble to the CAIR and in detail in the Emission Inventory Technical Support Document and the Air Quality Modeling Technical Support Document for the CAIR.

The EPA estimates, based on the air quality analysis for the CAIR, that the required SO_2 and NO_X emissions reductions would, by themselves, bring into attainment 52 of the 80 counties that are otherwise expected to be in nonattainment for $PM_{2.5}$ in 2010, and 57 of the 75 counties that are otherwise expected to be in nonattainment for $PM_{2.5}$ in 2015. The EPA further estimates that the required NO_X emissions reductions would, by themselves, bring into attainment 3 of the 40 counties that are otherwise expected to be in nonattainment for 8-hour ozone in 2010, and 6 of the 22 counties that are expected to be in nonattainment for 8-hour ozone in 2015. In addition, today's rule will improve $PM_{2.5}$ and 8-hour ozone air quality in the areas that will remain nonattainment for those two NAAQS after implementation of today's rule. Because of today's rule, the States with those remaining nonattainment areas will find it less burdensome and less expensive to reach attainment by adopting additional local controls. The CAIR will also reduce $PM_{2.5}$ and 8-hour ozone levels in attainment areas.

We have not conducted an incremental analysis of the air quality effects from the proposed extension of the annual emissions reductions requirements to New Jersey and Delaware. However, IPM modeling of EGU emissions indicates that assuming that all States join the EPA trading programs, highly cost-effective emissions reductions will be distributed across the region in addition to New Jersey and Delaware themselves, and contribute to the attainment of these two States' downwind neighbors as well as other States with nonattainment areas.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In view of its important policy implications and potential effect on the economy of over $100 million, the CAIR program inclusive of this proposal has been judged to be an economically "significant regulatory action" within the meaning of the Executive Order. As a result, today's proposal was submitted to OMB for review, and EPA has prepared an economic analysis of the CAIR program including this proposal entitled "Regulatory Impact Analysis of the Final Clean Air Interstate Rule" (March 2005).

1. What Economic Analyses Were Conducted for the Rulemaking?

The analyses conducted for the CAIR program (CAIR final rule plus this New Jersey and Delaware proposal) provide several important analyses of impacts on public welfare. These include an analysis of the social benefits, social costs, and net benefits of the regulatory scenario. The economic analyses also address issues involving small business impacts, unfunded mandates (including impacts for Tribal governments), environmental justice, children's health, energy impacts, and requirements of the Paperwork Reduction Act.

2. What Are the Benefits and Costs of the CAIR Program?

The benefit-cost analysis shows that substantial net economic benefits to society are likely to be achieved due to reduction in emissions resulting from the CAIR program that includes annual SO_2 and NO_X controls for New Jersey and Delaware. The results show that the CAIR program would be highly beneficial to society, with annual net benefits (benefits less costs) of approximately $71.4 or $60.4 billion in 2010 and $98.5 or $83.2 billion in 2015. These alternative net benefits estimates occur due to differing assumptions concerning the social discount rate used to estimate the annual value of the benefits of the rule with the lower estimates relating to a discount rate of 7 percent and the higher estimates a discount rate of 3 percent. All amounts are reflected in 1999 dollars. For more information, see the NFR for the CAIR published in today's **Federal Register** and the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005).

3. What Are the Incremental Costs to the Electricity-Generating Industry Associated With This New Jersey and Delaware Proposal?

The costs presented here represent the total incremental cost to the electricity-generating industry of reducing NO_X and SO_2 emissions to meet the reduction requirements set forth in the rule, assuming all States participate in a regionwide cap-and-trade program. These costs estimates are referred to as private costs, and these estimates differ

from the cost of the program to society or social cost estimates presented for the CAIR program discussed previously. As shown in Table VI–1, EPA estimates the annual private costs of this proposal are approximately $30 million in 2010 and $40 million in 2015. All estimates reflect 1999 dollars. Overall, the impacts of the CAIR program are modest, particularly in light of the large benefits we expect. This industry generates over $250 billion in annual revenues.[13] The industry has the ability to largely pass along the costs of the rule to consumers, and this will result in the costs largely falling upon the consumers of electricity. Retail electricity prices are projected to increase roughly 2.0—2.7 percent with the CAIR program (inclusive of this proposal) in the 2010 and 2015 timeframe, and then drop below 2.0 percent thereafter. The effects of the CAIR program on natural gas prices and the power sector generation mix is also small, with a 1.6 percent or less increase in natural gas prices projected from 2010 to 2020. There will be continued reliance on coal-fired generation, which is projected to remain at roughly 50 percent of total electricity generated. A relatively small amount of coal-fired capacity, about 5.3 GW (1.7 percent of all coal-fired capacity and 0.5 percent of all generating capacity), is projected to be uneconomic to maintain. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region. Units projected to be uneconomic to maintain may be 'mothballed,' retired, or kept in service to ensure transmission reliability in certain parts of the grid.

As demand grows in the future, additional coal-fired generation is projected to be built under the CAIR program. As a result, both coal-fired generation and coal production for electricity generation are projected to increase from 2003 levels by about 15 percent in 2010 and 25 percent by 2020, and we expect a small shift towards greater coal production in Appalachia and the Interior coal regions of the country with the CAIR.

For today's proposal, EPA analyzed the costs using the IPM. The IPM is a dynamic linear programming model that can be used to examine the economic impacts of air pollution control policies for SO_2 and NO_X throughout the contiguous U.S. for the entire power system. Documentation for IPM can be found in the docket for this rulemaking or at *www.epa.gov/airmarkets/epa-ipm.*

[13] In 2003, the electric power industry had retail sales of 259 billion dollars *(http://www.eia.doe.gov/cneaf/electricty/epm/table5–2.html).*

The additional annualized incremental cost of including Delaware and New Jersey in the CAIR program occur because of the additional installation and operation of a modest amount of pollution control equipment and other relatively minor compliance costs.

TABLE VI–1.—ANNUALIZED INCREMENTAL PRIVATE COSTS FOR THE CAIR REGION

[Billions of 1999 dollars]

Program	Costs in 2010	Costs in 2015
Final CAIR (DE and NJ: Ozone Season NO_X Only)	$2.33	$3.59
Final CAIR plus NJ and DE proposal (DE and NJ: Annual SO_2 and NO_X)	2.36	3.63
Difference between CAIR scenarios	0.03	0.04

4. What Potential Benefits May Be Associated With This Proposal?

Air quality modeling was not conducted for the New Jersey and Delaware proposal. For this reason, an analysis of the potential benefits for the New Jersey and Delaware proposal could not be completed with any degree of specificity. However based on the air quality modeling results for the CAIR, we make ball park estimates of the benefits and net benefits that might occur with this proposal. Including New Jersey and Delaware in the CAIR program would result in additional reductions of SO_2 and NO_X emissions. We estimate that approximately $630 million of the total annual CAIR program benefits previously discussed are attributable to annual SO_2 and NO_X controls for New Jersey and Delaware in 2010. This estimate increases to over $1.1 billion in 2015. The full CAIR analysis including New Jersey and Delaware showed a benefit-cost ratio of around 39:1 in 2015. Based on the relatively low estimated private costs of including New Jersey and Delaware of $30 million in 2010 and $40 million in 2015, it is highly unlikely that costs of including New Jersey and Delaware would exceed benefits even if benefits of controlling SO_2 and NO_X for New Jersey and Delaware were substantially lower than the average benefit we used to estimate the benefits. It is highly unlikely that benefits are much lower than average given the urban nature of much of New Jersey, and the proximity of New Jersey and Delaware to many heavily populated urban areas.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2184.01.

The purpose of the ICR is to estimate the anticipated monitoring, reporting, and recordkeeping burden estimates and associated costs for States, local governments, and sources that are expected to result from this proposal. This ICR describes the nature of the information collection and the estimated burden for this proposal. In cases where information is already collected by a related program, the ICR takes into account only the additional burden. This situation arises in States that are also subject to requirements of the Consolidated Emissions Reporting Rule (EPA ICR number 0916.10; OMB control number 2060–0088) or for sources that are subject to the Acid Rain Program (EPA ICR 2152.01; EPA ICR number 1633.13; OMB control number 2060–0258) or NO_X SIP Call (EPA ICR number 1857.03; OMB number 2060–0445) requirements.

The total monitoring, recordkeeping, and reporting burden to sources resulting from New Jersey and Delaware choosing to participate in a regional cap and trade program are expected to be approximately $270,000 at the time the monitors are implemented. This estimate includes the annualized cost of installing and operating appropriate SO_2 and NO_X emissions monitoring equipment to measure and report the total emissions of these pollutants from affected EGUs (serving generators greater than 25 megawatt capacity) for this proposed rule. The burden to State and local air agencies includes any necessary SIP revisions, performing monitoring certification, and fulfilling audit responsibilities.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number OAR–2003–0053. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 12, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by June 13, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121)(SBREFA), provides that whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code, as defined by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Table VI–2 lists entities potentially impacted by this rule with applicable NAICS code.

VI–2.—POTENTIALLY REGULATED CATEGORIES AND ENTITIES

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal govemment	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local govemment-owned and operated establishments are classified according to the activity in which they are engaged.

According to the SBA size standards for NAICS code 221112 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See Michigan* v. *EPA,* 213 F.3d 663, 668–69 (D.C. Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001).

The CAIR final rule and this proposed rule would not establish requirements applicable to small entities. Instead, it would require States to develop, adopt, and submit SIP revisions that would achieve the necessary SO_2 and NO_X emissions reductions, and would leave to the States the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because affected States would have discretion to choose the sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not predict the effect of the rule on small entities. Although not required by the RFA, the Agency has conducted a small business analysis for the CAIR program inclusive of the New Jersey and Delaware proposal.

Overall, about 445 MW of total small entity capacity, or 1.0 percent of total small entity capacity in the CAIR region, is projected to be uneconomic to maintain under the CAIR relative to the base case. In practice, units projected to be uneconomic to maintain may be "mothballed," retired, or kept in service to ensure transmission reliability in certain parts of the grid. Our IPM modeling is unable to distinguish between these potential outcomes.

The EPA modeling identified 264 small power-generating entities within the entire CAIR region based upon the definition of small entity outlined above. The EPA excluded from this analysis 189 small entities that were not projected to have at least one unit with a generating capacity of 25 MW or great operating in the base case. Thus, we found that 75 small entities may potentially be affected by the CAIR program. Of these 75 small entities, 28 may experience compliance costs in excess of 1 percent of revenues in 2010, and 46 may in 2015, based on the Agency's assumptions of how the affected States implement control measures to meet their emissions budgets as set forth in this rulemaking. Potentially affected small entities experiencing compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of the CAIR. However, it is the Agency's position that because none of the affected entities currently operate in a competitive market environment, they should be able to pass the costs of complying with the CAIR on to rate-payers. Moreover, the decision to include only units greater than 25 MW in size exempts 185 small entities that would otherwise be potentially affected by the CAIR.

Two other points should be considered when evaluating the impact of the CAIR program (inclusive of the New Jersey and Delaware proposal), specifically, and cap and trade programs more generally, on small entities. First, under the CAIR program, the cap-and-trade program is designed such that States determine how NO_X allowances

are to be allocated across units. A State that wishes to mitigate the impact of the rule on small entities might choose to allocate NO_X allowances in a manner that is favorable to small entities. Finally, the use of cap and trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)(UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, Local, or Tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, 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 EPA prepared a written statement for the CAIR final inclusive of this proposal consistent with the requirements of section 202 of the UMRA. Furthermore, as EPA stated in the rule, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan. Furthermore, in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA carried out consultations with the governmental entities affected by this rule.

For several reasons, however, EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to this rulemaking action. First, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to revise its SIP that arises out of section 110(a) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

As noted earlier, however, notwithstanding these issues, EPA prepared the statement that would be required by UMRA if its statutory provisions applied for the CAIR final rule and this proposal. The EPA also consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

The EPA conducted an analysis of the economic impacts anticipated from the CAIR program inclusive of the New Jersey and Delaware proposal for government-owned entities. The modeling conducted using the IPM projects that about 340 MW of municipality-owned capacity (about 0.4 percent of all subdivision, State and municipality capacity in the CAIR region) would be uneconomic to maintain under the CAIR program, beyond what is projected in the base case. In practice, however, the units projected to be uneconomic to maintain may be "mothballed," retired, or kept in service to ensure transmission reliability in certain parts of the grid. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region.

The EPA modeling identified 265 State or municipally-owned entities, as well as subdivisions, within the entire CAIR region. The EPA excluded from the analysis government-owned entities that were not projected to have at least one unit with generating capacity of 25 MW or greater in the base case. Thus, we excluded 184 entities from the analysis. We found that 81 government entities will be potentially affected by the CAIR. Of the 81 government entities, 20 may experience compliance costs in excess of 1 percent of revenues in 2010, and 39 may in 2015, based on our assumptions of how the affected States implement control measures to meet their emissions budgets as set forth in this rulemaking.

Government entities projected to experience compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of the CAIR. However, as noted above, it is EPA's position that because these government entities can pass on their costs of compliance to rate-payers, they will not be significantly impacted. Furthermore, the decision to include only units greater than 25 MW in size exempts 179 government entities that would otherwise be potentially affected by the CAIR program.

The above points aside, potentially adverse impacts of the CAIR program on State and municipality-owned entities could be limited by the fact that the cap and trade program is designed such that States determine how NO_X allowances are to be allocated across units. A State that wishes to mitigate the impact of the rule on State or municipality-owned entities might choose to allocate NO_X allowances in a manner that is favorable to these entities. Finally, the use of cap and trade in general will limit impacts on entities owned by small governments relative to a less flexible command-and-control program.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposal does not have federalism implications. It will 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. The CAA establishes the relationship between the

Federal government and the States, and this proposed rule does not impact that relationship. Thus, Executive Order 13132 does not apply to this proposal. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the CAIR from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian 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." The CAIR program (CAIR final and New Jersey and Delaware proposed rule) does not have "Tribal implications" as specified in Executive Order 13175.

The CAIR program addresses transport of pollution that are precursors for ozone and $PM_{2.5}$. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement this rule. The Tribal Authority Rule (TAR) give Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

The CAIR program does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented a federally enforceable air quality management program under the CAA at this time. Furthermore, the CAIR program does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because the CAIR program does not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal Implementation Plan, today's proposal could have implications for that Tribe, but it would not impose substantial direct costs upon the Tribe, nor preempt Tribal law. As provided above, EPA has estimated that the total annual private costs for the CAIR program inclusive of the New Jersey and Delaware proposal for the CAIR region as implemented by State, Local, and Tribal governments is approximately $2.4 billion in 2010 and $3.6 billion in 2015 (1999 dollars). There are currently very few emissions sources in Indian country that could be affected by the CAIR program and the percentage of Tribal land that will be impacted is very small. For Tribes that choose to regulate sources in Indian country, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

Although Executive Order 13175 does not apply to this proposal, EPA consulted with Tribal officials in developing the CAIR program. The EPA has encouraged Tribal input at an early stage. Also, EPA held periodic meetings with the States and the Tribes during the technical development of the CAIR program. Three meetings were held with the Crow Tribe, where the Tribe expressed concerns about potential impacts of the CAIR on their coal mine operations. The addition of Delaware and New Jersey to the CAIR program does not have any bearing upon the concerns expressed by the Tribes. In addition, EPA held three calls with Tribal environmental professionals to address concerns specific to the Tribes. These discussions have given EPA valuable information about Tribal concerns regarding the development of the CAIR program. The EPA has provided briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums. Input from Tribal representatives has been taken into consideration in development of the CAIR program.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns 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, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The CAIR program inclusive of the New Jersey and Delaware proposal is not subject to the Executive Order, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in this rule will further improve air quality and will further improve children's health.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking (1) (i) a significant regulatory action under Executive Order 12866 or any successor order, and (ii) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) designated by the Administrator of the Office of Information and Regulatory Affairs as a "significant energy action." The CAIR program (the CAIR final and the New Jersey and Delaware proposal) is a significant regulatory action under Executive Order 12866, and the CAIR program may have a significant adverse effect on the supply, distribution, or use of energy.

If States choose to obtain the emissions reductions required by the CAIR final and this proposed rule by regulating EGUs, EPA projects that approximately 5.3 GWs of coal-fired generation may be removed from operation by 2010. In practice, however, the units projected to be uneconomic to maintain may be "mothballed," retired, or kept in service to ensure transmission reliability in certain parts of the grid. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region. Less conservative assumptions regarding natural gas prices or electricity demand would create a greater incentive to keep these units operational. The EPA projects that the average annual electricity price will increase by less than 2.7 percent in the

CAIR region for the CAIR program. The EPA does not believe that the CAIR final and this proposed rule will have any other impacts that exceed the significance criteria.

The EPA believes that a number of features of today's rulemaking serve to reduce its impact on energy supply. First, the optional trading program provides considerable flexibility to the power sector and enables industry to comply with the emission reduction requirements in the most cost-effective manner, thus minimizing overall costs and the ultimate impact on energy supply. The ability to use banked allowances from the existing title IV SO_2 Trading Program and the NO_X SIP Call Trading Program also provide additional flexibility. Second, the CAIR program caps are set in two phases and provide adequate time for EGUs to install pollution controls. For more details concerning energy impacts, see the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005).

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The CAIR final and this proposed rule would require all sources that participate in the trading program under part 96 to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in Part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in Part 75. When EPA revises the test procedures set forth in Part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under section 75.66 before they are used under part 75.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[14] agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that "appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group." (EPA, 1998)

In accordance with Executive Order 12898, the Agency has considered whether the CAIR program inclusive of the New Jersey and Delaware proposed rule may have disproportionate negative impacts on minority or low income populations. The Agency expects the CAIR program to lead to reductions in air pollution and exposures generally. For this reason, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

K. 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. The 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 a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 96

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 10, 2005.

Stephen L Johnson,

Acting Administrator.

[FR Doc. 05–5520 Filed 5–11–05; 8:45 am]

BILLING CODE 6560–50–P

[14] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

Federal Register

Thursday,
May 12, 2005

Part IV

Federal Trade Commission

16 CFR Part 316
Definitions, Implementation, and Reporting Requirements Under the CAN–SPAM Act; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 316

[Project No. R411008]

RIN 3084–AA96

Definitions, Implementation, and Reporting Requirements Under the CAN–SPAM Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of Proposed Rulemaking; request for public comment.

SUMMARY: In this document, the Federal Trade Commission ("Commission" or "FTC") proposes rules pursuant to several distinct provisions of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN–SPAM" or "the Act"). Specifically, section 7702(17)(B) grants the FTC discretionary authority to prescribe rules modifying the Act's definition of "transactional or relationship message." Section 7704(c)(1) authorizes the Commission to adopt a rule modifying the ten-business-day period senders (and those acting on their behalf) have under the Act to process recipients' "opt-out" requests with respect to "commercial electronic mail messages." Section 7704(c)(2) authorizes the Commission to adopt a rule specifying activities or practices that would be considered "aggravated violations" by section 7704(b) of the Act, in addition to the aggravated violations already specified in the statute. Finally, section 7711(a) gives the FTC discretionary authority to "issue regulations to implement the provisions of [the] Act."

This document invites written comments on issues raised by the proposed Rule and seeks answers to the specific questions set forth in Part VII of this NPRM.

DATES: Written comments must be received by June 27, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "CAN–SPAM Act Rulemaking, Project No. R411008" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, CAN–SPAM Act, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c) (2005).[1]

Comments filed in electronic form should be submitted by clicking on the following Weblink: *https://secure.commentworks.com/ftc-canspam/* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-canspam/* Weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Sana Coleman, Staff Attorney, (202) 326–2249; or Catherine Harrington-McBride, Staff Attorney, (202) 326–2452; Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAN–SPAM Act of 2003

On December 16, 2003, the President signed the CAN–SPAM Act into law.[2] The Act, which took effect on January 1, 2004, imposes a series of new requirements on the use of commercial electronic mail ("e-mail") messages. In addition, the Act gives Federal civil and criminal enforcement authorities new tools to combat unsolicited commercial e-mail ("UCE" or "spam"). Moreover, the Act allows State attorneys general to enforce its civil provisions, and creates a private right of action for providers of Internet access services.

The Act also provides for FTC rulemaking on a number of topics. The Commission has already published final Rule provisions: (1) Governing the labeling of commercial e-mail containing sexually-oriented material,[3] and (2) establishing criteria for determining when the primary purpose of an e-mail message is commercial.[4] The current Notice addresses the Act's grant of discretionary authority for the Commission to issue regulations concerning certain of the Act's other definitions and provisions,[5] specifically, to:

- Expand or contract the definition of the term "transactional or relationship message" under the Act "to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of [the] Act" [6]
- Modify the ten-business-day period prescribed in the Act for honoring a recipient's opt-out request; [7]
- Specify activities or practices as aggravated violations (in addition to those set forth as such in section 7704(b) of CAN–SPAM) "if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection [7704(a) of the Act]"; [8] and
- "issue regulations to implement the provisions of this Act."[9]

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[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 15 U.S.C. 7701–7713.

[3] 69 FR 21024 (Apr. 19, 2004).

[4] 70 FR 3110 (Jan. 19, 2005).

[5] The Act authorizes the Commission to use notice and comment rulemaking pursuant to the Administrative Procedures Act, 5 U.S.C. 553. 15 U.S.C. 7711.

[6] 15 U.S.C. 7702(17)(B).

[7] 15 U.S.C. 7704(c)(1).

[8] 15 U.S.C. 7704(c)(2).

[9] 15 U.S.C. 7711(a). This provision excludes from the scope of its general grant of rulemaking authority section 7703 of the Act (relating to criminal offenses) and section 7712 of the Act (expanding the scope of the Communications Act of 1934). In addition, section 7711(b) limits the general grant of rulemaking authority in section 7711(a) by specifying that the Commijssion may not use that authority to establish "a requirement pursuant to Section 7704(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by Section 7704(a)(5)(A)

B. Advance Notice of Proposed Rulemaking

On March 11, 2004, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") which solicited comments on a number of issues raised by the CAN–SPAM Act, most importantly, the interpretation of "primary purpose." In addition, the ANPR requested comment on the modification of the definition of "transactional or relationship message," on the appropriateness of the ten-business-day opt-out period that had been set by the Act, on additional aggravated violations that might be appropriate, and on implementation of the Act's provisions generally.[10] The ANPR set a date of April 12, 2004, by which to submit comments. In response to petitions from several trade associations, the Commission announced on April 7 that it would extend the comment period to April 20, 2004.[11]

In response to the ANPR, the Commission received approximately 13,517 comments from representatives of a broad spectrum of the online commerce industry, trade associations, individual consumers, and consumer and privacy advocates.[12] Commenters generally applauded CAN–SPAM as an effort to stem the flood of unsolicited and deceptive commercial e-mail that has threatened the convenience and efficiency of online commerce. Commenters also offered several suggestions for the Commission's consideration in drafting regulations to implement the Act.

C. Notice of Proposed Rulemaking on CAN–SPAM Issues Other Than the "Primary Purpose" of an E-mail Message

Based on the comments received in response to the ANPR, as well as the Commission's law enforcement experience, in this NPRM the Commission proposes rule provisions on five broad topics: (1) Defining the term "person" (in Part II.A.1.); (2) limiting the definition of "sender" to address scenarios where a single e-mail message contains advertisements from multiple entities (in Part II A. 2.); (3) clarifying that Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations are "valid physical postal addresses" (in Part II.A.4.); (4) shortening the time a sender has to honor a recipient's opt-out request (in Part II. B.); and (5) clarifying that a recipient may not be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to submit a valid opt-out request (in Part II. C.).[13] In Part II of this NPRM, each of these proposed provisions is discussed, section by section. Other topics are also discussed, in response to issues raised in comments responding to the ANPR, regarding CAN–SPAM's definition of "transactional or relationship message" (in Part II.A.3.), and the Commission's views on how CAN–SPAM applies to certain e-mail marketing practices, including "forward-to-a-friend" e-mail marketing campaigns (in Part II.A.5.), even though the Commission does not propose rule provisions addressing those practices. Finally, in Part II.D., the Commission discusses its determination not to designate additional "aggravated violations" under section 7704(c)(2).

The Commission invites written comment on the questions in Part VII to assist the Commission in determining whether the proposed Rule provisions strike an appropriate balance, maximizing protections for e-mail recipients while avoiding the imposition of unnecessary compliance burdens on law-abiding industry members.[14]

II. Analysis of Comments and Discussion of the Proposed Rule

A. Section 316.2—Definitions

Section 316.2—one of the Rule provisions previously adopted under CAN–SPAM—defines thirteen terms by reference to the corresponding sections of the Act that define those terms.[15] This NPRM does *not* reopen the rulemaking process for twelve of these definitions. This NPRM, however, does propose adding a proviso to the previously-adopted definition of "sender." This NPRM also proposes adding definitions of "person" and "valid physical postal address." These proposed definitional provisions were not part of the earlier rulemaking proceedings, but are discussed and explained in the sections that follow. (Parts II.A.1, 2 and 4.) This discussion of definitions also covers, in Part II.A.3 and 5, why the Commission is not proposing any change to the Act's definition of "transactional or relationship message" and how CAN–SPAM applies to "forward-to-a-friend" e-mail campaigns.

* * * in any particular part of such a mail message (such as the subject line or body)."

[10] 69 FR 11776 (Mar. 11, 2004). The ANPR also solicited comment on questions related to four Commission reports required to be submitted to Congress: a report on establishing a "Do Not E-mail" Registry, submitted on June 15, 2004; a report on establishing a system for rewarding those who supply information about CAN–SPAM violations, submitted on September 16, 2004; a report setting forth a plan for requiring commercial e-mail to be identifiable from its subject line, to be submitted by June 16, 2005; and a report on the effectiveness of CAN–SPAM, to be submitted by December 16, 2005. The comments related to the "Do Not E-mail" Registry are discussed in the Commission's June 15, 2004, Report, and comments related to the informant reward system are discussed in the September 16, 2004, Report. The Commission will consider the relevant comments received in response to the ANPR in preparing the remaining reports.

[11] 69 FR 18851 (Apr. 9, 2004). The associations seeking additional time were the Direct Marketing Association, the American Association of Advertising Agencies, the Association of National Advertisers, the Consumer Bankers Association, and the Magazine Publishers of America. The associations indicated that an extension was necessary because of the religious holidays and the need to consult more fully with their memberships to prepare complete responses.

[12] This figure includes comments received on the "Do Not E-mail" Registry, which had a comment period that ended March 31, 2004. Appendix A is a list of commenters who submitted a comment in response to the ANPR cited in this NPRM. Appendix A also provides the acronyms used to identify each commente in this NPRM. A full list of commenters, as well as a complete record of this proceeding, may be found on the Commissioner's Web site: *http://www.ftc.gov/os/comments/conspan/index.htm.*

[13] In addition to proposing several new Rule provisions, this NPRM proposes to renumber certain Rule provisions that were previously adopted. 69 FR 21024 (Apr. 19, 2004); 70 FR 3110 (Jan. 19, 2005). The Commission proposes no other substantive changes to the previously-adopted Rule provisions. The Sexually Explicit Labeling Rule provisions, which were found at 316.4 in the January 19, 2005, **Federal Register** Notice's final Rule, are at 316.6 in the proposed Rule presented in this NPRM. The severability provision, which was 316.5, is now 316.7. The new 316.4 proposes a modification to the amount of time senders (and those acting on their behalf) have to process recipients' opt-out requests. The new 316.5 proposes to regulate how opt-out mechanisms in commercial e-mail messages may work. Sections 316.1, 316.2, and 316.3 (regarding scope, definitions, and "primary purpose" criteria respectively) retain their numbering from the January 19, 2005, **Federal Register** Notice.

[14] The August 13, 2004, NPRM was limited to the Commission's proposal for criteria to facilitate the determination of the primary purpose of an electronic mail message, 69 FR 50091. These criteria were finalized in a January 19, 2005, **Federal Register** Notice, and have been adopted as 16 CFR 316.3. *See* 70 FR 3110. Nevertheless, many comments submitted in response to that NPRM addressed issues other than "primary purpose" that were not raised in the August 13, 2004, NPRM, but are addressed in the instant NPRM. The Commission will consider comments relevant to discretionary rulemaking issues that were submitted in response to the August 13, 2004, NPRM. Commenters are advised, however, that the instant NPRM proposes rule provisions and seeks comment relevant to the discretionary rulemaking topics. Commenters wishing to respond to this NPRM's proposals and requests for comment should take advantage of this current public comment opportunity.

[15] *See* 16 CFR 316.2; 69 FR 2104 (Apr. 19, 2004); 70 FR 3110 (Jan. 19, 2005).

1. Section 316.2(h)—Definition of "Person"

The term "person" appears throughout CAN–SPAM,[16] and is also used in a number of Rule provisions. The Commission proposes to add a definition of this term under authority granted in section 7711 of the Act, which empowers the Commission to "issue regulations to implement the provisions of this Act." The Commission believes that making it clear that the term "person" is broadly construed, and is not limited solely to a natural person, will advance the implementation of the Act. The proposed definition tracks the definition of the term included in the Telemarketing Sales Rule, 16 CFR 310.2(v): "an individual, group, unincorporated association, limited or general partnership, corporation, or other business entity."

2. Section 316.2(m)—Definition of "Sender"

Section 7702(16)(A) of the Act defines "sender" as "a person who initiates [a commercial electronic mail] message and whose product, service, or Internet Web site is advertised or promoted by the message." [17] The definitional provisions that the Commission has already adopted under CAN–SPAM [18] incorporate by reference the Act's definition of "sender." Many commenters urged that this definition be modified to provide that when more than one person's products or services are advertised or promoted in a single e-mail message there would be only one sender of a message for purposes of the Act.[19] In response to these comments, the Commission proposes in 316.2(m) to set out the criteria for identifying the "sender" in that situation. The Commission proposes this clarification pursuant to its discretionary rulemaking authority to "issue regulations to implement the provisions of this Act." [20] Implementation of the Act requires clarity with respect to who is the "sender" of a commercial e-mail message because the "sender" is obligated under the Act to honor any opt-out requests. Moreover, the sender, as the initiator of a commercial e-mail message, is also obligated to provide a functioning return e-mail address or other Internet-based opt-out mechanism and provide a valid physical postal address of the sender.[21] Therefore, the proposed definition is:

The definition of the term "sender" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(16), *provided that*, when more than one person's products or services are advertised or promoted in a single electronic mail message, each such person who is within the Act's definition will be deemed to be a "sender," *except that*, if only one such person both is within the Act's definition and meets one or more of the criteria set forth below, only that person will be deemed to be the "sender" of that message:

(i) The person controls the content of such message;

(ii) The person determines the electronic mail addresses to which such message is sent; or

(iii) The person is identified in the "from" line as the sender of the message.

Under this proposal, only one of several persons whose products or services are advertised or promoted in an e-mail message would be the "sender" if the person initiated the message *and* was the only person who controlled the content of the message, determined the e-mail addresses to which it would be sent, or was identified in the "from" line as the sender.[22] If no one person who meets the Act's definition of "sender" satisfies the latter part of this proposed definition (*i.e.*, if no one person controls the content of the message, determines the e-mail addresses to which the message would be sent, or is identified in the "from" line as the sender), then all persons who satisfy the definition will be considered senders for purposes of CAN–SPAM compliance obligations.

A hypothetical example can illustrate this proposal. If X, Y, and Z are sellers who satisfy the Act's "sender" definition, and they designate X to be the single "sender" under the Commission's proposal, *among the three sellers*, only X may control the message's content, control its recipient list, or appear in its "from" line. X need *not* satisfy *all three* of these criteria, but *no other seller* may satisfy *any* of them. The sellers may use third parties to be responsible for any criteria not satisfied by X. For example, if X appears in the "from" line, the sellers may use third parties—but *not* Y or Z—to control the message's content and recipient list.

a. Comments on the Definition of "Sender"

The Act's definition is clear with respect to a scenario where a person tries to hide his identity or escape responsibility by having someone else send commercial e-mail on his behalf. Indeed, the legislative history indicates an intent that the definition of "sender" reach any entity that either sends its own e-mail messages or contracts with one or more third parties [23] to transmit messages on its behalf.[24] The Senate Report states:

> Thus, if one company hires another to coordinate an e-mail marketing campaign on its behalf, only the first company is the sender, because the second company's product is not advertised by the message. If the second company in this example, however, originates or transmits e-mail on behalf of the first company, then * * * both companies would be considered to have "initiated" the e-mail, even though only the first company is considered to be the "sender." [25]

However, commenters argued strongly that the Act's definition is unclear when applied to more complex marketing arrangements involving multiple advertisers and e-mail service providers.

Several commenters claimed to find support in the Act and its legislative

[16] *See, e.g.*, 15 U.S.C. 7702(8), (12), (15), (16); 7704(a)(1), (2) and (3).

[17] 15 U.S.C. 7702(16)(A).

[18] 16 CFR 316.2(m).

[19] The ANPR asked whether it would be helpful to clarify the obligations of the parties when more than one seller's products or services are advertised in a message. The responders to the ANPR's web-based questionnaire overwhelmingly supported clarifying the obligations of multiple senders—seventy-seven percent of responders favored clarifying the obligations and eighty-two percent supported having the Commission issue regulations clarifying who meets the definition of "sender." Commenters who submitted written comments also strongly supported clarification. *See, e.g.*, ABA; IAC; Moerlien; PMA; USTOA; and Visa. Nevertheless, some commenters opined that e-mail messages may have multiple senders and that each should comply with the opt-out requirements. *See, e.g.*, ABM at 6–7 ("[E]ach business whose products are advertised should be considered a sender of the e-mail * * * provided that they are truly 'initiators' and that a reasonable recipient would perceive each of the businesses equally as a sender of the mail.") ABM proposed a drop-down menu from which recipients could choose whether to opt-out from future commercial e-mail from all, one, or several senders. *See also* ERA; Time Warner (joint marketing effort where two or more companies send out joint e-mail messages).

[20] 15 U.S.C. 7711(a).

[21] 15 U.S.C. 7704(a)(3), (a)(4), and (a)(5).

[22] This proposed definition does not eliminate the possibility that a message may have more than one "sender." However, advertisers can use the criteria set forth in the proposed definition to establish a single sender and avoid a multiple-sender situation. If advertisers fail to structure the message to avoid multiple senders under the proposed definition, then each sender is obligated to comply with CAN–SPAM requirements, notably, to provide an Internet-based opt-out mechanism and a valid physical postal address, and to honor any opt-out requests.

[23] This would include arrangements where numerous so-called "affiliates" are induced to send commercial e-mail messages on behalf of a seller to drive traffic to the seller's Web site, and the affiliates are paid based on the number of individuals who ultimately purchase the seller's product or service, or visit the operator's Web site through referral from the affiliate.

[24] *See, e.g.*, Bankers; IAC; Microsoft.

[25] S. Rep. No. 108–102, at 16 (2003).

history for the theory that CAN–SPAM provides for only one sender. For example, IAC, MBNA, and Microsoft pointed out that the statute, throughout, refers to a singular entity: "the sender" or "that sender." [26] By comparison, CAN–SPAM's definition of "initiate" expressly provides that more than one person may *initiate* a message.[27] These commenters also noted that the Senate Report cited immediately above refers exclusively to messages with one sender.[28] The Commission is not persuaded by these arguments. The Act's definitions of "initiate" and "sender" are intertwined and must be read together. Every "sender" must also satisfy the "initiate" definition, so the Act's provision for multiple initiators can apply to multiple senders as well. Moreover, based on the Senate Report excerpt cited above, the Commission believes that CAN–SPAM's drafters apparently had only one scenario in mind—a single seller hiring a third party to transmit messages on its behalf. It is not uncommon, however, for a particular commercial e-mail message to include promotions or advertisements from more than one seller. Under the Act's definition of "sender," each advertiser in an e-mail message may be a "sender" of the message because each: (1) "Initiates" the message [29] (*i.e.*, has "procured" the initiation of the message by paying, providing consideration to, or inducing another person to initiate the message on its behalf); [30] and (2) has products or services that are promoted or advertised in the message.[31]

Responding to the possibility that multiple senders in a single message may have to comply independently with CAN–SPAM, commenters claimed that implementation of the Act may be impeded in single message/multiple advertiser scenarios because of four significant problems the commenters identified regarding a regime that holds more than one party responsible for being the sender of a single e-mail: the difficulty of providing multiple opt-out mechanisms and valid physical postal addresses in a single message; the burden of maintaining multiple suppression lists; the possible violation of privacy policies and statutes; and frustration of consumer expectations. Each of these problems is discussed below.

First, commenters argued that if the law holds more than one party responsible for being "senders" of a single e-mail message, the message would have to contain a welter of opt-out mechanisms and physical postal addresses, likely resulting in consumer confusion.[32]

Second, commenters argued that treating each advertiser in an e-mail as a "sender" would require multiple suppression lists—*i.e.*, when a list owner advertises its products in an e-mail, along with advertisements of other companies, the list owner and each advertiser would have to add each person that opts out to their "suppression" lists and check each list against those of each of the others before sending additional messages.[33] Commenters argued that this result would add unnecessary administrative costs and complexity for legitimate e-mail marketers.[34] A list owner would have to develop a mechanism for receiving suppression lists from every advertiser with which it deals, and for comparing its own mailing list against multiple suppression lists for each message it sends.[35] In addition, a list owner would have to develop a mechanism for managing multiple opt-outs, *i.e.*, ensuring that the consumer can opt out from each advertiser and that all opt-outs sent to the list owner are forwarded to the advertisers from whom the consumer no longer wishes to receive commercial e-mail.[36] Commenters therefore argued that multiple suppression lists would increase costs and time delays.[37] Commenters also noted that, in the case of online newsletters or similar publications, the need for multiple suppression lists could endanger the existence of such newsletters because it would be impossible to create a different newsletter tailored for each recipient, containing only advertisements for companies to which that recipient had not sent an opt-out request.[38] In this regard, some commenters indicated that requiring multiple suppression lists also would threaten the type of joint marketing arrangements that are common in industry and chill electronic commerce.[39]

Third, commenters contended that the need for multiple suppression lists leads to another problem with treating each advertiser as a "sender": Multiple suppression lists could force a business to divulge customer names to list owners and other advertisers, even when the business has promised to protect that information under its privacy policy.[40] In addition to contravening privacy policies, a requirement to check names against multiple lists would necessitate passing lists back and forth among several parties, increasing the risk that consumers' private information may be shared with inappropriate entities, or subjected to greater vulnerability from hackers.[41]

Fourth, some commenters stated that, in some situations at least, a requirement that each separate advertiser in a single e-mail message be treated as a separate sender would run counter to consumer expectations.[42] Commenters noted that, when consumers have subscribed to an online newsletter or similar service, they would expect to submit an opt-out request to that newsletter publisher, not to each advertiser in the newsletter.[43] In other words, consumers would expect to send an opt-out request to the party with whom they have previously done business, and to whom they have provided affirmative consent to receive e-mails, not to advertisers that may be included in that party's message.[44]

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[26] *See, e.g.*, 15 U.S.C. 7704(a)(3), 7704(a)(5), 7702(17)(a).

[27] *See* 15 U.S.C. 7702(9).

[28] IAC; MBNA; Microsoft. *See* S. Rep. No. 108–102.

[29] 15 U.S.C. 7702(9).

[30] 15 U.S.C. 7702(12).

[31] 15 U.S.C. 7702(16)(A).

[32] *See, e.g.*, Bankers; DMA; ERA; IAC; MPAA; Microsoft; PMA; Time Warner.

[33] *Id.*

[34] *See, E.g.*, Bankers; ASTA; DMA; MPAA; Microsoft; SBA pointed out that this would be particularly injurious to small businesses.

[35] *See, e.g.*, DMA; ERA; Microsoft; PMA.

[36] *See, e.g.*, Microsoft.

[37] *See, e.g.*, Bankers; DMA; ERA; MPAA; Microsoft.

[38] *See, e.g.*, NAA; OPA; Time Warner.

[39] *See, e.g.*, NAA; Time Warner.

[40] *See, e.g.*, Bankers; ASTA; ACB; DMA; IAC; MPA; Microsoft; Time Warner. Of course, to the extent permitted by law, an advertiser could change its privacy policy to reflect the need to share opt-out information with other advertisers. Such a change, however, would not necessarily be in the bets interests of consumers who do not want their e-mail addresses shared among third parties.

[41] *See, e.g.*, DMA; IAC; MPAA; Microsoft; Time Warner.

[42] ABM; DMA; Time Warner.

[43] AMB; Microsoft; Midway; Time Warner.

[44] *See, e.g.*, Time Warner. Arguments regarding consumers' opt-out expectations are complicated by the fact that, in some situations, the party to whom consumers would expect to submit an opt-out request would not be a "sender" under the Act. For example, commenters raised the case of an e-mail address list owner who sends commercial messages on behalf of others but does not advertise any products or services of its own. *See, e.g.*, IAC; Microsoft (also arguing that the Act's regulation of this arrangement decreases consumer choice and control). If consumers have asked the list owner to send them commercial messages, they may expect to be able to opt out of that party's messages. This party would not be a "sender" under the Act and thus would not have to honor opt-out requests if its own products or services are not advertised in the message. List owners who send messages on a seller's behalf, however, may satisfy the Act's "initiate" definition. 15 U.S.C. 7702(9). Persons

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b. Proposal To Modify Definition of "Sender"

Based on the arguments discussed above, the Commission believes there is merit in the argument that an interpretation of "sender" that would not allow multiple advertisers in a single message to designate one as the "sender" could impede implementation of CAN–SPAM by placing undue compliance burdens on businesses and endangering the privacy of consumers' personal information. Therefore, the Commission believes that to implement CAN–SPAM, the definition of "sender" should be modified so that in situations when more than one person's products or services are promoted or advertised in a single e-mail message, those sellers may structure the sending of the e-mail message so that there will be only one sender of the message for purposes of the Act.

If there is only one sender, the question remains how to determine who is the sender in messages with multiple advertisers. Commenters proposed a variety of criteria for designating a single "sender" of such e-mail messages. Most commenters focused on two principal indicia for determining the identity of the sender: (1) Control of the message and (2) recipient expectations.[45]

(1) Control of the Message

Commenters cited several factors evidencing control that would be useful in determining the sender's identity, including:

- Which entity holds itself out as the sender? Who is in the "from" line?[46]
- Who originates or transmits the e-mail? Who sends it or causes it to be sent?[47]
- Who collects the recipients' e-mail addresses? Who is the list owner?[48]
- Who provides the list of recipients' e-mail addresses? Who controls the recipient list?[49]
- Who provides the content? Who controls the development of the message content?[50]
- Who, if anyone, has an existing relationship with the recipient? Who, if anyone, received affirmative consent to e-mail the recipient? Who controls the relationship with the recipient?[51]
- Who is the recipient directed to contact if he or she wants more information or to purchase the product or service advertised?[52]

(2) Recipient Expectations

Other commenters urged the Commission to use a "net impression" test, in which the "sender" would be determined in a way that would be consistent with the recipient's reasonable expectations, *i.e.*, the entity that a reasonable recipient would expect to be the "sender."[53] Commenters suggested that, under such an approach, the Commission would evaluate a message using a variety of factors, like those listed above, that may evidence control.

The Commission believes that the factors highlighted by commenters are relevant to the issue of who should be considered the "sender." These factors can be distilled to three elements, any one or more of which may be the deciding factor as to who is the sender in situations when more than one person's products or services are advertised or promoted in a single e-mail message. The proposed Rule provides that in such situations, the sellers may structure the sending of the e-mail message so that there is but one "sender"—a person who not only meets the Act's definition, but who also controls the content of the message, determines the e-mail addresses to which such message is sent, or is identified in the "from" line as the sender of the message.[54] This proposal would ameliorate what some commenters argued was an overwhelming obstacle to multiple-advertiser messages while preserving e-mail recipients' rights under CAN–SPAM. Sellers who do not avail themselves of this opportunity, in effect, to designate one "sender" will each be considered a sender of an e-mail message advertising products or services offered by multiple sellers.

c. "Sender" Definition Issues Other Than Single Message/Multiple Senders

Commenters raised additional issues that relate to the definition of "sender." These comments fall into three broad topics: (1) An entity's "sender" obligations under CAN–SPAM when its separate lines of business or divisions transmit e-mail messages; (2) an entity's "sender" obligations under CAN–SPAM for e-mails transmitted by its affiliates or other similar parties; and (3) content of the "from" line as it relates to the identity of the "sender." Comments on each of these topics are discussed in the sections immediately below.

(1) Separate Lines of Business or Divisions

Proposed 316.2(m) incorporates by reference the Act's language regarding obligations under CAN–SPAM when an entity's separate lines of business or divisions transmit e-mail messages.[55] Thus, when a separate line of business or division initiates a message in which it holds itself out to be that line of business or division rather than the entity of which it is a part, the "sender" of the message will be considered to be the line of business or division.

Some commenters asked the Commission to provide further clarification of the Act's language with regard to separate lines of business or divisions.[56] The Commission believes, however, that the elements of the definition of "sender" adequately clarify obligations in such situations and no additional Rule provision is needed.

Other commenters raised different concerns with how the "sender" definition's approach to separate lines of business or divisions would apply to various business models in e-mail

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who "initiate" commercial e-mail must comply with the Act. *See, e.g.*, 15 U.S.C. 7704(a) and (b).

[45] Nevertheless, a small group of commenters recommended that the Commission use a "but for" test. *See, e.g.*, Bankers; ASTA; DMA; Discover; IAC; MPAA; Microsoft; Time Warner. Under such a test, if an e-mail message would have been sent regardless of whether a particular advertisement was included, then the advertiser would not be a sender. The Commission does not believe that such a test is workable from the perspective of law enforcement because it relies on gauging the intent of the sender, an approach that is contrary to the Commission's traditional analysis of advertising or marketing claims. In its final primary purpose criteria, the Commission similarly declined to adopt a "but for" test for determining a message's "primary purpose," instead opting to look at the message from the recipient's perspective. 70 FR at 3118. The Commission noted that its decision to use the recipient's perspective is based on the analytical approach the Commission traditionally has taken with advertising, where claims are judged from the consumer's perspective not the marketer's. *Id.* Therefore, the Commission declines to adopt a "but for" test, or any other approach that focuses on a sender's intent, in determining the identity of the "sender."

[46] Bankers; DMA; ERA; Experian; Go Daddy; MPAA.

[47] *See, e.g.*, ABM; AeA; ACB; ERA; Experian; Go Daddy; IPPC; MMS; NAR; Coalition; Time Warner; USTOA.

[48] *See, e.g.*, DMA; Experian; ERA; IAC; IPPC; Microsoft; Moerlien; Time Warner. IAC and Microsoft also recommended that the list owner or broker be required to identify itself and the role it plays in sending the e-mail.

[49] *See, e.g.*, Bankers; AeA; DMA; ERA; MPAA; IAC; IPPC; MPAA.

[50] *See, e.g.*, AeA; DMA; ERA; Go Daddy; NAR.

[51] *See, e.g.*, AeA; Experian; IAC; Coalition.

[52] *See, e.g.*, Coalition (suggesting one test would be who derives the primary value from the message); USTOA.

[53] *See, e.g.*, ABM; IAC; Microsoft; NAR; Coalition; USTOA.

[54] See "from" line discussion in this NPRM, below, for explication of the requirements of CAN–SPAM and section 5 of the FTC Act with respect to the "from" line.

[55] 15 U.S.C. 7702(16)(B).

[56] *See, e.g.*, DSA; IFA; Go Daddy (suggesting that "sender" should not include affiliates unless companies are so closely intertwined that a reasonable person would conclude they were the same entity); IPPC; MMS; USTOA; Weston.

marketing. These commenters argued that third-party list providers or e-mail services should be considered akin to separate lines of business or divisions and asked that the Commission incorporate the concept of "third-party advertising service" or list provider into the definition of "sender." [57] These commenters expressed concern that the definition of "sender" does not encompass third-party advertising services, e-mail list service providers, or similar services that compile lists of e-mail addresses, have an established relationship with the recipients, and often use their own lists of e-mail addresses to transmit messages on behalf of advertisers.[58] Some commenters disagreed, urging the Commission to hold responsible the entity whose products or services are advertised or promoted in an e-mail, not the facilitators of the transaction such as list owners/brokers/managers, broadcast services, and other entities not promoting their own products and services in the e-mail.[59]

The Act is quite clear that the definition of "sender" includes two elements: one must initiate a message *and* advertise one's own product, service, or Web site in order to be a "sender." [60] Thus, the Act reflects Congress's determination that the obligations of the "sender" will fall only on an entity whose products or services are advertised in the message, even though other parties may also transmit or procure the transmission of the message. The Act's definition of "sender" simply does not apply to entities that do nothing more than provide a list of names or transmit a commercial e-mail message on behalf of those whose products or services are advertised in the message. Of course, if an e-mail service provider or list compiler or owner initiates messages that advertise or promote its *own* product or service as well as the products or services of others, the list owner may be considered to be the sender. Given this framework, the Commission is not inclined to expand CAN–SPAM's regulation of who must honor opt-out requests to entities whose products or services are *not* advertised or promoted in a message. However, pursuant to section 7709, which requires the Commission to report to Congress on its analysis of the effectiveness and enforcement of the Act, the Commission includes questions in Part VII on the benefits and burdens of such an expansion.

(2) Sender Liability for Practices of Affiliates or Other Similar Entities

Some commenters asked the Commission for a ruling that content providers are not responsible for e-mail messages advertising their product or service if the messages are sent by affiliates or other third parties over which they have no control.[61] The Commission declines to issue so broad a statement—especially because, in other contexts, it has specifically held sellers liable for the actions of third-party representatives if those sellers have failed to adequately monitor the activities of such third parties and have neglected to take corrective action when those parties fail to comply with the law.[62] The Commission believes it inappropriate to excuse content providers in advance from the obligation to monitor the activities of third parties with whom they contract. However, the Commission includes questions in Part VII on whether a "safe harbor" provision should be added to the Rule and, if so, what criteria such a safe harbor might include.

(3) Content of the "From" Line as It Relates to the Identity of the "Sender"

Several commenters requested guidance on CAN–SPAM's regulation of "from" line content. CAN–SPAM provides that "a 'from' line * * * that accurately identifies any person who initiated the message shall not be considered materially false or misleading." [63] Although this seems fairly straightforward on its face, a number of commenters expressed the view that clarification is needed as to what may be acceptable in the "from" line and what would be considered materially false or misleading.[64] Commenters noted that many of the problems with deceptive or fraudulent commercial e-mail involve "spoofing," where the sender pretends to be someone else to induce the recipient to open the e-mail message.[65] Commenters also urged the Commission to use caution and retain a flexible standard, allowing the use of any name in the "from" line as long as the name is not deceptive or misleading.[66] In this regard, they indicated that guidelines that are too specific may be overly restrictive because any particular sender might use a variety of names, none of which is deceptive.[67] Commenters suggested that each of the following could be non-deceptive when used in the "from" line: Advertiser's name, product being promoted, user ID, screen name, trade name, corporate division, e-mail service provider, third-party advertising service, or marketing company or list used.[68]

Because a significant number of commenters sought guidance on this issue, the Commission believes it helpful to set forth its interpretation of this portion of the Act, although it is not proposing rule provisions in this regard. The analysis must begin with section 7704(a)(1)(B), quoted above, which establishes that "a 'from' line * * * that accurately identifies any person who initiated the message shall not be considered materially false or misleading." [69] Section 7704(a)(6) of the Act is also important because it defines "materially" in this context, stating that:

> For purposes of [the Act's prohibition on false or misleading header information, including the "from" line], the term "materially," when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

Reading these two provisions together reveals that the test of whether a "from" line of an e-mail message runs afoul of CAN–SPAM entails resolution of two issues:

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[57] *See, e.g.*, Experian; Coalition (suggesting the Commission could interpret the Act as providing that a "third party advertising service" which "holds itself out to the recipient throughout the message as that particular [third party advertising service] rather than as the [advertiser itself], shall be treated as the sender of such message for purposes of this Act").

[58] *See, e.g.*, Experian.

[59] *See, e.g.*, MMS.

[60] S. Rep. No. 108–102.

[61] *See, e.g.*, ACB; IFA MPAA; Time Warner; Weston.

[62] *See, e.g.*, 310.4(b)(3)(v) of the Telemarketing Sales Rule, which requires sellers and telemarketers to monitor and enforce compliance with the do-not-call policy and procedures. *See also U.S.* v. *Richard Prochnow*, No. 1:02–CV–917–JOF (N.D. Ga. June 9, 2003).

[63] 15 U.S.C. 7704(a)(1)(B).

[64] *See, e.g.*, Experian; Go Daddy; Jaffe; ValueClick. On the other hand, NFCU considered the Act's language to be perfectly clear. Several commenters asked that the Rule prohibit deceptive or misleading routing or "reply to" information. *See* Bahr; K. Krueger. The Commission believes that this practice is already prohibited by section 7704(a)(1) and no further prohibition is needed.

[65] *See, e.g.*, Bahr, Giambra; Potocki; SIIA.

[66] *See, e.g.*, ASTA; EDC; EFF; Experian; Gilbert; Go Daddy; Jaffe; MBNA; NetCoalition; Richardson; SIIA; ValueClick.

[67] *See, e.g.*, ASTA; EFF; Experian; Gilbert; Go Daddy; Mead; NetCoalition; SIIA; ValueClick.

[68] *See, e.g.*, ASTA; Bank; Calvert; Countrywide; EDC; EFF; Experian; K. Krueger; MBNA; NetCoalition; Reed; Richardson; SIIA.

[69] 15 U.S.C. 7704(a)(1)(B).

• Whether the "from" line has been altered or concealed in a manner that would impair the ability of an ISP or a law enforcement agency to identify, locate, or respond to the person who initiated the message; and

• Whether the "from" line "accurately identifies any person who initiated the message."

The first element of this analysis demands little explication. It focuses on the typical spammer's favorite device—falsifying or manipulating header information to thwart efforts to identify and locate the originator of the e-mail. As to the second element, if the "from" line accurately identifies the person who initiated the message, then the "from" line would not be deceptive. The Commission believes that this does not mean that the "from" line necessarily must contain the initiator's formal or full legal name, but it does mean that it must give the recipient enough information to know who is sending the message. For example, if John Doe, marketing director for XYZ Company, sent out commercial e-mails for the company and the "from" line indicated that the message was from "John Doe" or from "XYZ Company," the "from" line would have accurately identified the person who initiated the message. Whether any other name—such as the user ID, corporate division, e-mail service provider, or others suggested by commenters—would be legally sufficient depends on whether such name "accurately identifies" a person who "initiated" the message, as that term is defined by the Act. For additional guidance on what information in the "from" line is acceptable, e-mail senders should consider their messages from their recipients' perspective. If a reasonable recipient would be confused by the "from" line identifier, or if a reasonable recipient would not expect the "from" line identifier that is provided, those are indications that the sender is not providing sufficient information.

3. Section 316.2(o)—Definition of "Transactional or Relationship Message"

CAN–SPAM designates five broad categories of messages as "transactional or relationship messages." [70] The Act excludes these messages from its definition of "commercial electronic mail message," [71] and thus excludes them from most of the Act's substantive requirements and prohibitions.[72]

The Act authorizes the Commission "to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of [the Act] to the extent that such modification is necessary to accommodate changes in e-mail technology or practices and accomplish the purposes of [the Act]." [73] Rule provisions previously adopted under CAN–SPAM [74] include 316.2(o), which incorporates the Act's definition of "transactional or relationship message" by reference. The Commission proposes no modification to this Rule provision. While many commenters made a number of thoughtful suggestions, none advanced any of them with sufficient evidentiary support for the Commission to conclude that any suggested modification "is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of [the Act]," as CAN–SPAM requires.[75] Nevertheless, the Commission has considered all the comments on this issue and sets forth its analysis below. The following sections discuss, in turn: (a) CAN–SPAM's regulation of "transactional or relationship" e-mail messages as compared with that of "commercial" e-mail messages; (b) the Act's standard for modifying the "transactional or relationship message" definition; and (c) commenters' suggestions for expanding the statutory categories of "transactional or relationship messages." Commenters' suggestions regarding each of the "transactional or relationship" categories as designated by the Act are discussed below, category-by-category.

a. CAN–SPAM's Regulation of "Transactional or Relationship" E-mail Messages as Compared to That of "Commercial" E-mail Messages

As noted, CAN–SPAM's requirements and prohibitions are mainly applicable to commercial e-mail messages. The Act defines commercial e-mail messages as those the "primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose)." [76] Commercial e-mail messages are subject to the Act's requirements that the sender or initiator include in the message: (1) A clear and conspicuous notice that the message is an advertisement or solicitation, if the message is sent without the "affirmative consent" of the recipient; (2) clear and conspicuous notice of the recipient's right to opt out of subsequent commercial messages from the same sender; and (3) a valid physical postal address of the sender.[77] The Act further prohibits false or misleading transmission information and deceptive subject headings, and requires that a sender provide a mechanism through which opt-out requests may be made online and honor a recipient's opt-out preference.[78]

Messages categorized as "transactional or relationship" are subject only to the Act's prohibition on false or misleading transmission information.[79] If a sender's e-mail message, however, is *not* considered as having a "transactional or relationship" primary purpose under one of the statutorily established categories, but instead is deemed to have a primary purpose that is commercial, the consequences are relatively modest. In such a case, the sender must comply with requirements of CAN–SPAM—most importantly (from the recipient's

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[70] Section 7702(17)(A) of the Act defines a "transactional or relationship message" as "an electronic mail message the primary purpose of which is—

(i) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) To provide—

(I) Notification concerning a change in the terms and features of;

(II) Notification of a change in the recipient's standing or status with respect to; or

(III) At regular periodic intervals, account balance information or other type of account statement with respect to—

A subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender."

[71] The Act defines a "commercial electronic mail message" as one "the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose)." 15 U.S.C. 7702(2)(A).

[72] One provision, section 7704(a)(1), which prohibits false or misleading transmission information, applies equally to "commercial electronic mail messages" and "transactional or relationship messages"; otherwise, CAN–SPAM's prohibitions and requirements cover only "commercial electronic mail messages."

[73] 15 U.S.C. 7702(17)(B).

[74] 69 FR 21024 (Apr. 19, 2004); 70 FR 3110 (Jan. 19, 2005).

[75] *Id.*

[76] 15 U.S.C. 7702(2)(A). *See* Rule Provisions Establishing Criteria for Determining When the Primary Purpose of an E-mail Message is Commercial, 70 FR 3110 (Jan. 19, 2005).

[77] 15 U.S.C. 7704(a)(5)(A)(i)–(iii).

[78] 15 U.S.C. 7704(a)(1); (a)(2); (a)(3); and (a)(4).

[79] 15 U.S.C. 7704(a)(1).

standpoint), to provide an opt-out mechanism and to honor opt-out requests received. These requirements do not prohibit transmission of "transactional or relationship" content. Even if a recipient opts out of receiving messages with a commercial primary purpose from a particular sender, that sender may continue to transmit other types of messages. Therefore, recipients who invoke their rights under the opt-out mechanism required by CAN–SPAM will continue to receive valuable "transactional or relationship" messages. This is important because transactional or relationship messages are communications that Congress has determined to be *per se* valuable to recipients. Nevertheless, to ensure that the protection from unwanted commercial e-mail CAN–SPAM affords recipients not be eroded, the Commission believes the partial exemptions from the Act's provisions established in the definitions of "commercial electronic mail message" and "transactional or relationship message" should be interpreted narrowly.

b. CAN–SPAM's Standard for Expanding or Contracting the Categories Designated as "Transactional or Relationship" Messages

CAN–SPAM authorizes the Commission to expand or contract the statutory definition of "transactional or relationship message" if two criteria are met: (1) The modification must be necessary to accommodate changes in e-mail technology or practices; and (2) the modification must accomplish the purposes of the Act. More than 120 commenters recommended specific modifications to expand or constrict the categories of transactional or relationship messages.[80] Nevertheless, it is striking that only a single commenter asserted that modification was necessary to accommodate changes in e-mail technology or practices.[81] Even this lone commenter did not assert that the change had occurred since the passage of the Act.[82] A handful of commenters suggested that their proposed modifications were necessary to accomplish the purposes of the Act, but these commenters did not claim that any change in technology or practice necessitated their suggested modifications.[83] Therefore, the Commission proposes no substantive modification to expand or contract coverage of the definition of "transactional or relationship message." Although it appears that no such changes are warranted at this time, the Commission did consider all of the comments received on this issue. The various proposals for modification are summarized below.

c. Commenters' Proposals With Respect to Transactional or Relationship Messages

In general, business commenters urged expansion of the definition of "transactional or relationship message" to ensure that it includes the messages that these commenters believe do not warrant the opt-out rights and disclosures that CAN–SPAM requires of commercial e-mail. Some commenters recommended modifying the existing statutory transactional or relationship categories explicitly to encompass certain types of e-mail messages. Others recommended specifying whole new categories. Still others sought clarification that particular e-mail messages would be deemed by the Commission to fall into one of the existing specified types. Some consumer commenters, however, believed that the specified categories of transactional or relationship messages were too broad. One such commenter opined that a message should only be considered transactional or relationship if the "recipient has given an e-mail address to the sender *and* requested that the sender use this method to send these messages."[84] Commenters' proposals regarding the five categories of transactional or relationship messages established by the Act are discussed immediately below, category by category, followed by a discussion of commenters' proposals for new categories of transactional or relationship messages.[85]

(1) Section 7702(17)(A)(i)—Messages To Facilitate, Complete, or Confirm a Commercial Transaction That the Recipient Has Previously Agreed To Enter Into With the Sender

Of the five categories of messages included in the Act's definition of transactional or relationship messages, the first is messages "to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender."[86] Although numerous commenters suggested modifications—predominantly that this part of the definition be expanded—the Commission proposes no modification to the Act's definition of "transactional or relationship message" in this area. As noted above, the Commission finds insufficient support in the comments to meet the statutory standard for modifying this definition. Commenters did not demonstrate that any modification is needed to accommodate changes in e-mail technology or practices, and to accomplish the purposes of the Act. Nonetheless, the Commission believes it worthwhile to summarize briefly the kinds of modifications suggested by commenters, and to explain its views regarding certain of this section's provisions. These suggested modifications fall under four basic topics: (a) What constitutes a "commercial transaction" under section 7702(17)(A)(i)? (b) How many confirmation messages under section 7702(17)(A)(i) may a sender transmit pursuant to a single transaction? (c) May an e-mail sender use a third-party to send messages under section 7702(17)(A)(i) on its behalf? and (d) Do messages negotiating a commercial transaction satisfy section 7702(17)(A)(i)? Comments relating to each of these topics are discussed in the sections below.

[80] A smattering of other commenters discussed technological changes that do not necessitate modification of the transactional or relationship definition. For example, a few commenters noted that new spam-blocking techniques used by ISPs to filter spam should not be allowed to filter out transactional or relationship messages. Jaffe; CMOR. Another commenter noted that "the use of ICQ, IM and text messaging via phone and blackberry has increased the source of UCE." Shaw. (ICQ is a type of instant messaging program. Instant messaging is defined by Webopedia.com as "a type of communications service that enables you to create a kind of private chat room with another individual in order to communicate in real time over the Internet, analogous to a telephone conversation, but using text-based, not voice-based, communication.")

[81] Discover.

[82] Discover cited a purportedly "recent" development in online marketing whereby "companies increasingly use e-mail to facilitate or complete transactions as to which the recipient has made an inquiry or application, but has not yet entered into a contract."

[83] Lenox; Visa. In fact, Go Daddy opined that there were no technological changes of which it was aware that would necessitate modification of this definition. Go Daddy.

[84] Marzuola.

[85] A variety of commenters claimed that some e-mail messages are neither commercial nor "transactional or relationship," and therefore should be considered exempt from the Act and the proposed Rule. *See, e.g.*, CBA; CMOR (messages sent to conduct marketing and opinion research); BMI (copyright infringement notices). *See also* ACA (claiming that debt collection e-mail messages are not commercial, and are "at most, 'transactional or relationship messages'"). The Commission agrees that certain types of messages may not satisfy either the "commercial" or "transactional or relationship" definitions, and thus are not regulated by CAN–SPAM. The Commission has posed questions in this NPRM asking whether certain types of messages are beyond the scope of the Act, and whether CAN–SPAM should be modified to address these messages.

[86] 15 U.S.C. 7702(17)(A)(i).

(a) What Constitutes a "Commercial Transaction" Under Section 7702(17)(A)(i)?

IAC urged the Commission to opine that a "commercial transaction," as used in section 7702(17)(A)(i) , need not involve the exchange of consideration.[87] IAC noted that in the definition of "commercial electronic mail message" the term "commercial products or services" includes "content on an Internet Web site operated for a commercial purpose." Based on this, IAC argues that registering for a free Internet service such as Evite (a Web site through which registrants may send electronic invitations to events) constitutes a commercial transaction. Microsoft also advocated this position, raising the specter that if the Commission does not adopt this view, it would only encourage "many more online businesses to charge for their services." [88]

The Commission believes that this reading of section 7702(17)(A)(i) is unnecessary because the types of e-mail messages that prompt the concern of IAC and Microsoft would likely be deemed "transactional or relationship messages" under a separate subparagraph of section 7702(17)(A). Specifically, under section 7702(17)(A)(v), it seems likely that a message sent from Evite or a similar entity to one who had registered to use its services would be considered a message "to deliver goods or services * * * that the recipient is entitled to receive under the terms of a transaction" between the recipient and Evite. The Commission believes that the modifier "commercial" has been deliberately omitted from this provision of CAN–SPAM to accommodate just the sort of scenario that IAC and Microsoft raise. The Commission seeks comment on whether messages sent pursuant to a relationship in which no consideration passes may be considered to be a "commercial transaction" under section 7702(17)(A)(i), or would more appropriately be considered a transactional or relationship message under section 7702(17)(A)(v), or under some other theory.

(b) How Many Confirmation Messages Under Section 7702(17)(A)(i) May a Sender Transmit Pursuant to a Single Transaction?

IAC also requested that the Commission expressly allow each confirmation message pursuant to a single transaction to be a transactional or relationship message, even if more than one such message is sent. As an example, IAC cited a scenario in which one confirmation is sent immediately after a consumer completes an online transaction (such as booking an airline flight or hotel room) and another is sent in close proximity to the travel time to remind a recipient of her reservation.[89] The Act is silent as to the number of times a sender may transmit to a particular recipient a message to facilitate, complete, or confirm a single commercial transaction. Nevertheless, the Commission believes that, given the purposes of the Act, a standard of reasonableness is implied, and that senders must meet that standard.[90] IAC's scenario would appear to meet this standard, but other scenarios would not. As an extreme example to illustrate the point, if a company sent hourly confirmations of a transaction that warranted merely a single such notice—particularly if the message also contained content advertising or promoting products or services—the Commission would likely view such messages as commercial and not transactional.

(c) May an E-mail Sender Use a Third Party To Send Messages Under Section 7702(17)(A)(i) on Its Behalf?

IAC also urged the Commission to opine that when an entity with whom a recipient has done business uses a third party to send a message confirming a transaction, the message would still be considered a transactional or relationship message.[91] By way of example, IAC argued that when a consumer books an airline reservation using Expedia, the consumer should be considered to have entered into a transaction not only with the airline, but also with Expedia.[92] NAIFA asked that the Commission opine that e-mail messages from an insurance agent to a customer should be considered transactional or relationship messages even though the customer pays the premium to the insurer, not the agent.[93]

These comments raise the question of whether the language of section 7702(17)(A)(i) supports allowing such transactional or relationship messages only from the sender, or also from affiliated third parties if they are facilitating, completing, or confirming a transaction. In the examples cited—when Expedia processes sales on behalf of an airline, and when an insurance company uses agents to sell policies—a message confirming the transaction would qualify as a transactional or relationship message under section 7702(17)(A)(i) whether, in the first example, it came from either Expedia or the airline, and whether, in the second example, it came from either the insurance company or the selling agent. These examples seem fairly straightforward; the Commission seeks comment on whether other situations involving transactional or relationship messages from an entity purporting to be acting on behalf of a sender might be more problematic for consumers or cooperating sellers, or present opportunities for evasion of CAN–SPAM's consumer protections.

(d) Do Messages Negotiating a Commercial Transaction Satisfy Section 7702(17)(A)(i)?

Some commenters asked that the Commission ensure that e-mail messages sent to negotiate a transaction be included in the definition of transactional or relationship message.[94] The Commission believes that, to the extent that negotiation may be considered a "commercial transaction" that a recipient has previously agreed to enter into, it would seem that such messages likely would be considered transactional or relationship as long as they were sent to facilitate or complete the negotiation. On the other hand, the Commission would not interpret the term "transactional or relationship message" to include an initial unsolicited message that proposes a transaction and attempts to launch a negotiation by offering goods or services. Rather, such a message would likely be categorized as a commercial e-mail message, and would be required to comply with all prescriptions of the Act. The Commission seeks more information about whether e-mail messages sent to effectuate or complete a negotiation might be considered "transactional or relationship messages" under section 7702(17)(A)(i), and if so, under what circumstances that may or may not be the case.

[87] IAC.

[88] Microsoft.

[89] IAC.

[90] *See* Go Daddy (advocating requiring contact via transactional or relationship messages to be reasonable).

[91] IAC.

[92] According to IAC, absent such an interpretation, if a consumer were to forward an opt-out request to Expedia pursuant to section 7704(a)(3)(A)(i) prior to the time Expedia had transferred the customer's e-mail address to the airline, such transfer could be considered a violation of section 7704(a)(4)(A)(iv).

[93] NAIFA.

[94] *See, e.g.*, Mellon; SIA; Wells Fargo.

(2) Section 7702(17)(A)(ii)—Messages To Provide Warranty Information, Product Recall Information, or Safety or Security Information With Respect to a Commercial Product or Service Used or Purchased by the Recipient

Commenters had relatively few suggestions for modification to this category, but NADA requested that the Commission opine that scheduled maintenance notifications be considered safety or security information and covered by this definition.[95] To the extent that scheduled maintenance is designed to ensure the safe operation of a product, the Commission believes that reminders of this nature would be considered safety information under the "transactional or relationship" partial exemption from CAN–SPAM's requirements. Scheduled maintenance that is *not* necessary for safe operation of a product, however, would not satisfy this "transactional or relationship" category. A message notifying recipients when such scheduled maintenance is due could satisfy section 7702(17)(A)(v)—covering, among other things, delivery of product updates or upgrades—if recipients previously agreed to receive such notices from the sender. Section 7702(17)(A)(v), the fifth "transactional or relationship" category, is discussed below.

Two other comments requested expansion of this category to cover additional messages. First, Ford Motor recommended that "product service" information be expressly included in this category. It is not clear from the comment what kinds of messages might fall outside the existing categories in this section, but within the "product service" category. Nor does the comment contain sufficient evidence that this suggested modification is necessary to accommodate changes in e-mail technology or practices and accomplish the purposes of the Act. As a result, the Commission declines to incorporate this language into the proposed Rule.[96] Second, Countrywide recommended expansion of "security information" to include "security-related notifications or education." The language of the Act is clear that messages relaying "security information" will be categorized as "transactional or relationship," and the Commission finds that the comments contain insufficient justification for altering this language.

(3) Section 7702(17)(A)(iii)—Messages To Provide—(I) Notification Concerning a Change in the Terms or Features of; (II) Notification of a Change in the Recipient's Standing or Status With Respect To; or (III) at Regular Periodic Intervals, Account Balance Information or Other Type of Account Statement With Respect to, a Subscription, Membership, Account, Loan, or Comparable Ongoing Commercial Relationship Involving the Ongoing Purchase or Use by the Recipient of Products or Services Offered by the Sender

The Commission received many comments related to the three subcategories that comprise this provision. Most business commenters recommended expanding these subcategories or interpreting them broadly to include more (or even all) messages between a sender and any customer with whom the sender has an established business relationship.[97] Some commenters who endorsed this expansion suggested that the proposed Rule require that the frequency with which recipients are contacted must be reasonable.[98] Some consumers expressed concern about the volume of e-mail messages they might receive if this transactional or relationship category were interpreted too broadly.[99]

The recommendations for expansion were couched in a variety of terms. Some commenters requested that any e-mails regarding a transaction that formed the basis of a relationship between the seller and consumer be considered transactional or relationship messages. Others suggested that messages about an ongoing service that the customer has requested or consented to receive be considered "transactional or relationship."[100] Still others recommended adding a new category for messages "concerning information, products, or services that the recipient has received or will receive from the sender."[101]

Some of the comments focused on specific elements of the language of section 7702(17)(A)(iii). For example, some comments advocated interpreting "an ongoing commercial relationship" as beginning when a person opts in to receiving future messages, even in the absence of a purchase.[102] Others suggested removing the restriction that account balance information and statements be sent at regular intervals, noting that certain account statements are "sent following a transaction, rather than on a 'regular' temporal schedule."[103] Some sought a specific articulation that billing statements are transactional or relationship messages, even if some advertising content is included because "billing statements would be sent irrespective of the inclusion of an advertisement."[104] One commenter recommended allowing not only account balance but also "account-related" information to be considered transactional.[105] Another inquired whether offerings of related or alternative financial relationships could be categorized as transactional or relationship messages.[106]

The Commission is not inclined to adopt any of these suggestions. As noted above, the Commission believes that the "transactional or relationship" provision should be interpreted narrowly to prevent erosion of the protection CAN–SPAM affords recipients from receiving unwanted messages. The categories delineated in the "transactional or relationship" provision of the statute are clear and comprehensive, representing Congress's judgment as to the kinds of messages that should be exempt from most provisions of the Act, including its opt-out requirements. Furthermore, the statute provides that the Commission can modify these categories only if the modification is necessary to accommodate changes in e-mail technology or practices and accomplish the purposes of the Act. Because there is inadequate support in the comments to support such a finding, the Commission is not inclined to expand this category of transactional or relationship messages as suggested by commenters.

A small number of the comments focused on narrowing the category to prevent abuses in instances when marketers continue to send commercial

[95] NADA.

[96] If recipients agreed to receive such messages, however, they could satisfy section 7702(17)(A)(v) in the same way that messages reminding recipients of scheduled maintenance could. *See* discussion of section 7702(17)(A)(v) below.

[97] *See, e.g.*, Cendant.

[98] Go Daddy.

[99] Jensen (noting that merely purchasing a single item from a company should not "allow the company to then inundate the customer with sales pitches, nor should a bank be able to send messages for its many services unrelated to a customers [sic] checking account if that is the only relationship that exists between the parties").

[100] MPAA; Lenox.

[101] Wells Fargo.

[102] *See, e.g.*, MPAA (noting that a "subscription or 'preferred customer' loyalty program where special discounts and event opportunities are routinely promoted" often do not involve the exchange of consideration).

[103] CBA. The Commission believes that if such notices are routinely sent at a certain interval following a transaction that this may well meet the regular interval standard.

[104] Reed. This issue is addressed in the January 19, 2005, **Federal Register** Notice. 70 FR at 3117.

[105] Countrywide.

[106] Visa.

e-mail messages under the guise of transactional or relationship messages even after a loan is paid off, claiming to be changing the status of the recipient from "paid off" to "inactive." [107] In a similar vein, NCL expressed concern about the use of dual-purpose messages not only to transmit the recipient's bank balance, but also to advertise additional financial products or services, noting the "potential for abuse" if the advertising content overwhelms the transactional or relationship content. As noted above, application of the Commission's primary purpose criteria [108] will allow for proper categorization of such messages. Moreover, as noted in relation to section 7702(17)(A)(i), the Commission interprets the Act as implying a standard of reasonableness. As a result, the Commission may evaluate whether the frequency of contact with which messages purported to be "transactional or relationship" are sent exceeds what would be reasonable for such communications in determining whether the message is delivering *bona fide* transactional or relationship content. The Commission therefore is not inclined to propose a rule provision that departs from the statutory language of section 7702(17)(A)(iii).

(4) Section 7702(17)(A)(iv)—Messages To Provide Information Directly Related to an Employment Relationship or Related Benefit Plan in Which the Recipient Is Currently Involved, Participating, or Enrolled

The Commission received a relatively small number of comments on this part of the definition of transactional or relationship message. A consistent theme in the few comments received was the concern that employers be able to send messages to their employees promoting discounts or other offers available to them because of their status as employees.[109] As noted above, the Commission believes that the categories within the definition of transactional or relationship message should be interpreted narrowly. It is unclear from the comments received in response to the ANPR, however, how narrowly this provision must be construed to ensure that e-mail recipients are not unduly burdened by unwanted commercial e-mail messages in the context of an employer-employee relationship. The Commission therefore poses questions in this NPRM soliciting data about classifying messages that offer employee discounts or other similar messages as transactional or relationship messages on the ground that they "provide information directly related to an employment relationship * * *."

One commenter urged the Commission to opine that a message sent by a third party on behalf of an employer would be considered transactional.[110] The Commission believes that it is reasonable to interpret the Act to allow an employer to retain a third party as its agent to send a message that would otherwise fit within the confines of this definition; such a message would not be excluded from the definition merely because the third party initiated the e-mail. Nevertheless, the Commission does not interpret this provision as providing blanket treatment as "transactional or relationship" for any e-mail message sent on behalf of a third party, even with the permission of an employer. Thus, if a third party were to market its own goods and services to the employees of another company on its own behalf, rather than on behalf of the employer, those messages would not be deemed "transactional or relationship" under section 7702(17)(A)(iv). The Commission welcomes further comment this issue.

A few commenters suggested that the Commission depart from the language of the Act by deleting the term "directly," to require only that a message be "related to an employment relationship or related employee benefit plan." [111] Others suggested that the term "'directly related to an employment relationship' is not sufficiently clear," and recommended that the proposed Rule provide that "[e]ven commercial messages are employment related when delivered over employer-provided computers." [112] The Commission believes such departures from the statute are unwarranted because the comments provide insufficient evidentiary basis that the modification would meet the statutory standard—*i.e.*, necessary to accommodate changes in e-mail technology or practices and to accomplish the purposes of the Act. Moreover, such a modification would diminish the protections provided to recipients of unwanted commercial e-mail messages. For the same reasons, the Commission declines to interpret the phrase "employment relationship" so broadly as to allow *any* messages sent by an employer to an employee to qualify as transactional or relationship messsages. The language of the statute clearly delineates this category of transactional or relationship messages as those "to provide information directly related to an employment relationship * * *" and the Commission finds no basis in the comments to expand this category.

Other comments focused on when an employment relationship begins. MPAA requested clarification that an "'employment relationship' begins at the time when an offer of employment is tendered." [113] This transactional or relationship category includes "provid[ing] information directly related to an employment relationship." Information submitted to a prospective employee who has received a *bona fide* offer of employment after actively seeking such employment could be considered information "directly related to an employment relationship," provided such information regards only the prospective employment relationship. As discussed above, the Commission narrowly interprets the scope of the employment relationship. Therefore, e-mail messages sent in regard to the initiation of such an employment relationship present little risk of abuse. At this time, the Commission believes that there is little likelihood that prospective employees would be subject to unwanted commercial e-mail messages from their prospective employers between the time an offer of employment is made and the time it is either accepted or rejected. Questions regarding this interpretation are posed in this NPRM.

As discussed above, since no comments suggested changes that would meet the statutory standard, the Commission declines to propose a rule that would depart from the statutory language.

(5) Section 7702(17)(A)(v)—Messages To Deliver Goods or Services, Including Product Updates or Upgrades, That the Recipient Is Entitled To Receive Under the Terms of a Transaction That the Recipient Has Previously Agreed To Enter Into With the Sender

The Commission received many comments on this provision, most of which addressed application of the act to: (a) E-mail messages delivered pursuant to an electronic subscription; (b) e-mail sent in response to a request for information from a recipient; or (c) messages from an association to its

[107] *See, e.g.*, Ford.

[108] 16 CFR 316.3.

[109] Wells Fargo; CBA; NADA.

[110] SVM ("This definition should be modified to acknowledge that a message is transactional or relationship message, regardless of whether it is sent directly by the employer or with the consent of the employer or on behalf of the employer by a third party or by a service in which the employer of the recipient has enrolled on behalf of the recipient.").

[111] *See, e.g.*, Countrywide.

[112] Ford Motor.

[113] MPAA.

membership. Each of these is discussed below.

(a) E-mail Messages Delivered Pursuant to an Electronic Subscription

Several commenters recommended considering subscriptions (to newsletters, membership clubs, or other similar electronically delivered content) "transactional or relationship" because such messages deliver goods or services the recipient is entitled to receive under the terms of a transaction that the recipient previously agreed to enter into with the sender.[114] According to one of these commenters, section 7702(17)(A)(v)'s reference to a previously agreed-to transaction is satisfied when a recipient opts in to a sender's mailing list, whether or not the recipient provided consideration.[115] Similarly, Microsoft suggested "where the underlying transaction specifically includes the receipt of promotional e-mails, such as a subscription to a free online service that is supported in whole or in part through the transmission of promotional messages to subscribers," such promotional messages should be considered "transactional or relationship."[116]

CAN–SPAM's regulation of a message delivered pursuant to a subscription depends on whether or not the message contains exclusively commercial content. The Commission addressed this distinction in the "primary purpose" rulemaking proceeding. In that proceeding, the Commission stated that an exclusively commercial message does *not* satisfy section 7702(17)(A)(v).[117] Rather, CAN–SPAM treats such a message, when it is sent pursuant to a subscription, as a commercial e-mail message delivered with the recipient's "affirmative consent."[118] In that case, all of CAN–SPAM's provisions regulating commercial e-mail apply, except a recipient's "affirmative consent" overrides his or her previously-submitted opt-out request, and a message sent with a recipient's affirmative consent does not have to provide clear and conspicuous identification that the message is an advertisement or solicitation.[119] When a subscription calls for delivery of a message that is not exclusively commercial, then the message is "transactional or relationship" under section 7702(17)(A)(v) as long as "the recipient is entitled to receive [the message] under the terms of a transaction that the recipient has previously agreed to enter into with the sender."[120] The sender is not required to receive consideration from the recipient for the message to fall within this category.

(b) E-mail Messages That Respond to a Recipient's Request for Information

Some commenters suggested that messages containing information specifically requested by the recipient be considered "transactional or relationship."[121] ValueClick noted that absent such an interpretation, a consumer visiting a travel Web site and requesting information about a specific destination might be unable to receive messages about the destination about which she inquired.[122] Justasmallthing.com echoed this sentiment, stating that if a request for a catalog is made by a recipient, a company should have the right to respond by e-mail, unless the recipient has requested not to be contacted in that manner.[123] ABM argued that messages sent in response to a specific request for information should be allowed even if the requestor had previously opted out of commercial mail messages.[124] These commenters were consistent in their belief that the intent of the Act is not to regulate solicited e-mail messages, and that failure to state expressly that such messages are included in the definition of transactional or relationship message would lead to decreased productivity and unnecessary restrictions on consensual communication.[125]

The Commission believes that the concerns raised by these commenters are already addressed by section 7704(a)(4) of the Act, which makes clear that even commercial e-mail messages may be sent to a recipient who has previously opted out "if there is affirmative consent by the recipient subsequent to the opt-out request."[126] In each of the scenarios posed by commenters, consumers who request information or consent to receive it would, presumably, have provided "affirmative consent," thus enabling the sender to respond.[127]

(c) E-mail Messages From an Association to Its Members

Many membership associations argued that e-mail messages sent by associations to their members should be considered transactional. ABA requested that the definition of transactional or relationship messages be modified to expressly "include all e-mail communications, whether commercial or informational, that are sent by associations and other tax-exempt nonprofit organizations to their own members."[128] As ABA noted, "[t]he act of procuring membership in an organization has long provided explicit and implicit consent to communication from that organization regarding that membership, especially when the individual voluntarily provides his or her e-mail address fully anticipating receipt of e-mail communications."* * *[129]

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[114] P&G United; Speer (noting that the language of the Act should be expanded to allow for the delivery of "information" as well as goods or services); SIA (requesting that the FTC clarify that certain informational messages, including "newsletters, reports, and others that provide information to customers, concerning such things as investments or advice, do not have a primary purpose that is commercial in nature"); Lunde; Lenox; Venable; NEPA; Comerica.

[115] Edgley.

[116] Microsoft.

[117] 70 FR at 3118, n. 91.

[118] *See* 15 U.S.C. 7702(1) for the Act's definition of "affirmative consent."

[119] *See* 15 U.S.C. 7704(a)(4)(B); 7704(a)(5)(B).

[120] 15 U.S.C. 7702(17)(A)(v).

[121] *See* Edgley; ESPC; Fredrikson; Mellon.

[122] *See also* Discover; KeyCorp; PMA; SIA. ASA made a similar argument in the business-to-business context regarding messages responding to an invitation from a general contractor to bid on a project. According to ASA, if bid proposals sent in response to such invitations were not considered transactional, subcontractors wishing to reply could have to determine if the general contractor has opted out before doing so.

[123] *See also* Edgley; Fredrikson.

[124] *See also* KeyCorp; NADA (analogizing to the Telemarketing Sales Rule, which permits telemarketing calls in response to an inquiry or application even if the individual called is on the National Do Not Call Registry). This is permissible under section 7704(a)(4)(B) of the Act.

[125] *See, e.g.*, ABA (noting that the Act was "intended to apply primarily to unsolicited communications sent by for-profit businesses, not to e-mail communications between associations and other tax-exempt nonprofit organizations and their respective members" and that members "expect—and value—the receipt of such information" as renewals, seminar notices, and educational materials); UNC; United (arguing that since messages a recipient "knowingly chooses to receive" are not unsolicited, they should be treated as transactional or relationship messages); Lenox; ClickZ; ICOP; Aspects.

[126] 15 U.S.C. 7704(a)(4)(B). Section 7702(1) presents the Act's definition of "affirmative consent." Of course, any commercial e-mail message sent with a recipient's affirmative consent must provide an opt-out mechanism that complies with sections 7704(a)(3) and 7704(a)(5).

[127] 15 U.S.C. 7702(1)(A) (defining "affirmative consent" to mean "the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative").

[128] ABA. *See also* RTCM; AAOMS; IAAMC; ABM; AOC (suggesting that while existing categories of transactional or relationship message may include communications between organizations and their members, the expansion of either category or the creation of a new category that explicitly delineates such messages as transactional or relationship would be preferable).

[129] One consequence of categorizing such opt-in mail as transactional or relationship is that those who receive it would not have a legally-mandated opportunity to make an opt-out request pursuant to sections 7704(a)(3)(A) and (a)(4)(A). Some

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The Commission believes it is likely that many such messages may have a primary purpose that fits within the existing categories of transactional or relationship messages. However, the Act does not provide an explicit exemption for communications by membership associations with their members, nor do any of the comments argue that modifying the definition of "transactional or relationship message" to include comments from associations to their membership is necessary to accommodate changes in e-mail technology or practices and accomplish the purposes of the Act. Thus, to the extent that application of the primary purpose criteria yields the conclusion that a membership association's e-mail message sent to its membership has a commercial primary purpose, then the association, as a sender, would need to comply with the provisions of the Act relating to commercial e-mail messages.

Lastly, some commenters requested expanding the section 7702(17)(A)(v) category to include messages about service updates or upgrades, in addition to product upgrades.[130] One suggested that the provision should be framed around messages the sender is entitled to send, rather than those a recipient is entitled to receive.[131] As neither of these suggestions was supported by evidence that the proposed change is necessary to accommodate changes in e-mail technology or practices and accomplish the purposes of the Act, the Commission is not inclined to adopt them.

(6) New Categories of Transactional or Relationship Messages Recommended by Commenters

Commenters proposed a variety of new transactional or relationship categories for specific market segments or types of campaigns. These include messages from educational institutions to their faculty, staff, students, alumni, and friends;[132] communications between franchisors and franchisees;[133] messages sent by cemeteries and funeral homes;[134] all messages sent by businesses to their existing customers;[135] business-to-business communications,[136] including what some commenters termed "business relationship messages'";[137] messages sent by non-profit organizations;[138] messages that provide legally mandated notifications to customers;[139] and messages reminding consumers "that they are included in the sender's database or have been added to such database and how they may opt-out."[140] As discussed above, because no comments suggest that the recommended changes are necessary to accommodate changes in e-mail technology or practices and accomplish the purposes of the Act, the Commission declines to adopt these recommendations. If a message contains the commercial advertisement or promotion of a commercial product or service, it contains "commercial" content under the Act. If a message providing non-commercial content (such as a legally mandated notification) also contains commercial content, then it will be governed by the Commission's primary purpose criteria as a dual-purpose message.[141] The Commission has included in this NPRM questions that solicit further information on the topic of new transactional or relationship categories.

4. Section 316.2(p)—Definition of "Valid Physical Postal Address"

The proposed Rule defines the term "valid physical postal address" to clarify that a sender may comply with section 7704(a)(5)(A)(iii) of the Act by including in any commercial e-mail message any of the following: (1) The sender's current street address; (2) a Post Office box the sender has registered with the United States Postal Service; or (3) a private mailbox the sender has registered with a commercial mail receiving agency ("CMRA") that is established pursuant to United States Postal Service regulations. This proposed definition is important because section 7704(a)(5)(A)(iii) of the Act requires any commercial e-mail message to include "a valid physical postal address of the sender."[142]

In its ANPR, the Commission noted that many senders of commercial e-mail seeking compliance advice had questioned the scope of the term "valid physical postal address," suggesting rulemaking under section 7711 might be appropriate to clarify this issue.[143] Accordingly, the ANPR asked whether the term "valid physical postal address" could fairly be read to encompass a Post Office box or private mailbox,[144] and

commenters noted that association members, and others who receive transactional or relationship messages, are afforded the right to "opt out" as part of their membership. *See, e.g.*, AOC; AWWA. There is, however, no legal compulsion for associations to grant this right to members.

[130] SVM.

[131] SVM.

[132] KSUF; UNC (arguing that "CAN–SPAM compliance language" requiring an opt-out mechanism in every message deemed to be commercial would negatively impact the recipients' view of the message, and "reduce drastically the size" of their e-mail contact list).

[133] Cendant (arguing that the primary purpose of these messages, even those offering business seminars, is not to sell such services, but rather to "timely communicate and offer business seminars to our franchisees").

[134] ICFA (arguing that the CAN–SPAM Act "never intended to restrict" messages sent by cemeteries and funeral homes to alert families to special events or services, or changes in cemetery rules).

[135] NEPA. *See also* Comerica; ACB; PMA ("[A]ny e-mail relating to the goods or services which formed the basis of the transaction or relationship between the sender and the consumer should be considered a transactional or relationship message.").

[136] *See, e.g.*, Visa (noting that the Commission had included a business-to-business exemption in the Telemarketing Sales Rule); ACLI (noting the definition of "Pre-Existing Business Relationship" in § 214 of the FACT Act, Pub. L. 108–159, 117 Stat. 1952); MMS; Harte; RMAS; SIA. Courthouse agreed that such a preexisting or current business relationship exemption is desirable, but noted that it may be appropriate to limit it to relationships where there has been a "prior monetary payment by the recipient to the sender."

[137] Some commenters mentioned a special category of "business relationship" messages: those that are individualized and sent from one employee of a company to an individual recipient (or small number of recipients). *See, e.g.*, ESPC; Wells Fargo (stating that if each e-mail sent by an employee of a business has to be scrubbed against that business's suppression list it would be "extraordinarily burdensome and expensive"). The Commission has asked questions in Part VII of this NPRM about whether such a carve-out is warranted due to changes in e-mail technology and practices, and whether such a carve-out is necessary to accomplish the purposes of the Act.

[138] *See, e.g.*, ASAE; AWWA; ABA; RTCM; AAOMS; IAAMC; ABM; AOC. Several of these commenters argued that all e-mail communications from non-profit organizations to their current members should be deemed "transactional or relationship messages." Others claimed that messages by nonprofits might be considered "commercial" only if the messages' content related to an activity not substantially related to the organization's tax-exempt, non-profit purposes. The main justification offered by these commenters was that a nonprofit's messages to its members are intended to provide information in connection with an organization or association membership and/or to deliver goods and services under the terms of an existing member, donor or customer relationship.

[139] According to commenters, these include privacy notices, billing error notices, and change in terms notices. *See* IBAT; RMAS (urging that e-mails including a service deliverable, obligatory notice, or other contracted-for advice, product, or service should be transactional); SIA (recommending that notices mandated under Gramm-Leach-Bliley be considered transactional); Wells Fargo (suggesting that the Commission coordinate with banking regulators regarding the overlap in regulations regarding legal notices); Comerica.

[140] ValueClick.

[141] *See* 16 CFR 316.3. For a detailed discussion of the Commission's primary purpose criteria, *see* 70 FR 3110.

[142] 15 U.S.C. 7704(a)(5)(A)(iii). It is noteworthy that other anti-spam legislation introduced in the 108th Congress contained a requirement that the valid physical address of the sender be included in each e-mail message. *See* SPAM Act, S. 1231, section 206 (introduced June 11, 2003). Still other bills required inclusion of the sender's valid physical street address. *See, e.g.*, Reduction in Distribution of Spam Act of 2003, H.R. 2214, section 101(a)(1)(D) (introduced May 22, 2003).

[143] 69 FR at 11781.

[144] This NPRM uses the term "private mailbox," a term of art used in the regulations of the United States Postal Service, in place of the term commercial mail drop, which the ANPR used.

whether it would be desirable for the Commission to adopt rule provisions clarifying the scope of the term.[145]

Dozens of commenters responded on this issue.[146] A significant majority of these comments urged the Commission to clarify that a sender could satisfy the Act's valid physical postal address disclosure requirement by providing a Post Office box or private mailbox address. The Commission is persuaded by the arguments these commenters advanced, and therefore has defined the term in the proposed Rule to include the sender's street address, Post Office box, or private mailbox, duly registered with the United States Postal Service or a CMRA. These comments address a valid physical postal address as a means of identifying and locating the sender; the statutory intent reflected in the use of the term "physical" in the Act's reference to "valid physical postal address;" and practical concerns regarding the potential burdens on e-mail senders if Post Office boxes and private mailbox addresses were not considered to satisfy this requirement. Comments relating to each of these topics are discussed in turn immediately below.

a. A Valid Physical Postal Address as a Means of Identifying and Locating the Sender

Commenters uniformly agreed that one intent of CAN–SPAM is to allow recipients and law enforcement officials to easily identify and locate senders of e-mail.[147] These commenters were split, however, on the issue of whether inclusion of a street address is necessary to effectuate this intent. Arguing that Post Office boxes and private mailboxes have been used by criminals in the past as a means of preserving their anonymity, NFCU opposed reading the term "valid physical postal address" to include those alternatives.[148] Other commenters opposed defining "valid physical postal address" to include private mailboxes on the grounds that they are more likely than Post Office boxes to be used to mask the identity of a rogue spammer because the United States Postal Service typically has more rigorous identification procedures than private mailbox companies.[149] ASTA opined that allowing a Post Office box or commercial maildrop to be a "valid physical postal address" would frustrate the purpose of the Act because, if the sender falsified his or her registration information, the address would not help recipients or law enforcement authorities locate the sender.[150]

Many commenters took the opposite tack, arguing that allowing a Post Office box or private mailbox to be a "valid physical postal address" would make it possible to identify and locate senders because renters of Post Office boxes must provide their street location to the Post Office as a condition for obtaining a box address.[151] ERA also suggested that since very few recipients would ever visit the sender in person, a Post Office box or private mailbox address would be useful even if it only allowed the recipient to contact the sender by conventional mail.[152] Experian opined that for the Commission to limit the definition of "valid physical postal address" by excluding Post Office boxes and private mailboxes would exceed the agency's mandate under the Act.

The Commission is aware from its own law enforcement experience that those who orchestrate illegal schemes typically seek to remain anonymous to law enforcement officials and the irate public affected by their schemes. Nevertheless, CAN–SPAM and the FTC's regulations under it will impact the business practices of many legitimate companies that send commercial e-mail messages, and the Commission is reluctant to require such entities to alter their mail handling procedures unnecessarily. As SIIA noted, "[a]n individual or entity seeking to evade identification can just as easily use inaccurate street addresses" as hide behind a Post Office box or private mailbox.[153] Such a seller would simply tell the same lies in a different way. Thus, allowing the use of Post Office boxes and private mailboxes creates no greater risk that a sender will falsify information to thwart the purposes of the Act. Moreover, the regulations of the United States Postal Service require verification of the street address of any person seeking to rent a Post Office box or a private mailbox through a CMRA.[154] Therefore, the proposed Rule defines the term "valid physical postal address" to include Post Office boxes and private mailboxes duly registered pursuant to regulations of the United States Postal Service.[155]

b. Statutory Intent Reflected in the Use of the Term "Physical"

A second issue raised by several commenters was the meaning of the term "physical" in this section of the Act. Some commenters argued that the inclusion of the word "physical" must be given weight and that this word must be seen as a delimiter of the rest of the phrase, "valid * * * postal address," thus requiring a street address.[156] These

When a commenter is quoted, however, the term the commenter actually used is reproduced.

[145] 69 FR at 11781.

[146] One commenter suggested requiring that information provided to a domain name registrar be valid and include a confirmed physical address. Vandenberg. Such a requirement is unnecessary as obtaining a domain name by false or fraudulent representations is already prohibited by section 7704(a)(1)(A) of the Act. *See* 15 U.S.C. 7704(a)(1)(A).

[147] A few commenters on either side of this issue were particularly precise, focusing on the value of a valid physical postal address to law enforcement authorities and potential plaintiffs seeking to accomplish service of legal process. *See* AT&T; K. Krueger. *But see* DoubleClick ("If the purpose of this provision were to identify where companies could be served with legal process, then the law would have required the listing of a sender's corporate headquarters or legal 'place of doing business.' ").

[148] *See* NFCU (noting that "such addresses are often used in fraud schemes and effectively shield their owners from identification"). *See also* Sachau ("[W]e have too many fly by nights with post office boxes—here today and gone tomorrow."); ValueClick; ICC.

[149] Gilbert ("P.O. Boxes require identification etc. Many private mailboxes do not."); NCL (noting that since some individuals' and businesses' "only mailing address * * * is a post office box," inclusion of a P.O. box would be acceptable, but that private mailbox addresses should be excluded because they "are often used to obscure [senders'] real physical locations"); Shaw (no "mail drops").

[150] ASTA (also noting that a street address is desirable "to have a locus about which complaints could be filed if necessary"). *See also* RDS (noting that recipients and law enforcement officials must "have access to the persons responsible for sending the e-mail"); NetCoalition (A physical address is necessary to "ensur[e] that a sender can be physically located.").

[151] *See, e.g.*, SIA; Discover; IAC; DMA (suggesting that a Post Office box should be included as a valid physical postal address "[w]here the sender is otherwise locatable as a result of being a registered entity under corporate law or federal securities regulation"); ABA; DoubleClick. *But see* Gilbert (claiming that many private mailboxes do not require identification).

[152] ERA (noting that a requirement that the street location be disclosed could result in sender's having to train staff to handle customer visits).

[153] *See* SIIA. *See also* Coalition (noting that this provision is likely to impact legitimate marketers who do not misrepresent their identity rather than spammers who might as easily falsify a street address as hide behind a falsely registered Post Office box or private mailbox).

[154] A CMRA must confirm that an applicant for a private mailbox resides or conducts business at the permanent address shown on the application submitted to the CMRA. Applicants have a duty to file a revised application if any of the information provided changes. D042.2.6 (governing procedures for delivery of mail to a CMRA). Similarly, an application for a Post Office box "may not be approved until the applicant's identity and current permanent physical address where he or she resides or conducts business is verified." D910.2.1–2.2 (DMM Issue 58 plus Postal Bulletin changes through PB 22130 (6–10–04)). Furthermore, criminal or civil sanctions for providing false or misleading information on either application accrue, pursuant to 18 U.S.C. 1001.

[155] Proposed Rule 316.2(p).

[156] ValueClick (noting that "[t]he principal rule of statutory construction is to give meaning to every word"); ICC ("To give some meaning to the term 'physical,' something more than a mere P.O. Box is required."); AT&T ("[B]y choosing the adjective

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commenters read "physical" to mean something more than a mere mailbox. Other commenters countered this argument by citing legislative history to show that Congress intended that the term "physical" be viewed in contrast to the term "electronic," and to clarify that it would be insufficient for a sender to simply include an e-mail address to comply with this provision.[157]

The Commission is persuaded that the term "physical" can reasonably be read to include not only street addresses, but also validly registered Post Office boxes and private mailboxes. Post Office boxes and private mailboxes have a physical presence, and both are considered legitimate by the United States Postal Service.

c. Practical Concerns if Post Office Boxes and Private Mailboxes Were Not Considered "Valid Physical Postal Addresses"

Commenters who advocated that Post Office box and private mailbox addresses be considered "valid physical postal addresses" also raised several practical concerns about the possible consequences of excluding them from the definition. First, some commenters argued that exclusion of these alternatives could create confusion because there are still some areas within the United States that do not use street addresses, but rather rely on Post Office boxes for the delivery of all local mail.[158] The proposed definition of "valid physical postal address," which includes Post Office boxes and private mailboxes, will resolve the concerns expressed by these commenters.

Other commenters expressed concern that any interpretation of "valid physical postal address" that would require a small home-based business to include its street address in commercial e-mail would negatively impact the privacy, and possibly the physical security, of those who run such enterprises.[159] SBA noted that it has long advocated allowing the use of Post Office boxes to protect the security of home-based businesses, which account for more than half of all small businesses.[160] The Commission finds these comments persuasive, and believes that the proposed Rule's definition of "valid physical postal address" addresses their concerns.

Finally, commenters cited efficiency as a reason for allowing a Post Office box or private mailbox to be considered a "valid physical postal address." Comerica noted that Post Office boxes are typically used by corporations to speed the process of delivery of mail internally.[161] ACLI and others pointed out that this is not only an efficient business practice, but a common one used for many years by a host of legitimate businesses. Prompted by these and the other considerations discussed above, the Commission proposes to define "valid physical postal address" to include such addresses.

5. Implications of Certain Definitions for "Forward-to-a-Friend" Scenarios

In the ANPR, the Commission requested comment on the impact of CAN–SPAM on "forward-to-a-friend" e-mail marketing campaigns, by which recipients forward a company's message to other persons. In response, the Commission received more than forty comments on the issue of whether forward-to-a-friend marketing campaigns should be required to comply with the Act.

The most clear-cut "forward-to-a-friend" scenario involves the situation in which a person receives a commercial e-mail message and forwards the e-mail message to another person. Commenters were also concerned about a similar, but materially different, scenario involving a Web page that enables persons who visit it to send a link to or a copy of that Web page to others via e-mail. CAN–SPAM does not expressly address either of these forward-to-a-friend scenarios, but three of the Act's interconnected core definitions—"sender," "initiate," and "procure" [162]—have an impact on them. Therefore, to assist industry in complying with the Act, this notice discusses the applicability of these definitions to forward-to-a-friend practices.

Industry commenters uniformly opined that forward-to-a-friend campaigns should not be required to comply with the Act, especially when no consideration is provided.[163] They also opined that once a commercial e-mail message is forwarded by the original recipient to a friend or family member, it ceases to be a "commercial e-mail message" under the Act.[164] Industry commenters expressed concern that they would be held responsible for CAN–SPAM violations in messages over which they have no control.[165] They cited the fact that when the initial recipient of an e-mail message forwards a company's message, the company has no control over the content or destination of the message, and, thus, lacks the ability to ensure CAN–SPAM compliance.[166] The original recipient could, for example, delete the required opt-out mechanism or the valid physical postal address before forwarding the message to another, or forward the message to someone who, unbeknownst to the original recipient, has previously sent the company an opt-out request. If the company—the original sender or initiator of the e-mail message—is also deemed the sender or initiator of the forwarded e-mail message, then the company may be liable for sending a commercial e-mail message that does not include all the disclosures required by CAN–SPAM [167] or for sending a

'physical,' Congress intended to authorize the Commission to require a more substantial presence than a mere Post Office box.").

[157] Bahr.

[158] True (noting that "[i]t would be literally impossible for many legitimate mailers to comply with the Act if a PO Box were not acceptable"); AAR; Jaffe; NAA noting that many smaller newspapers are on rural routes, designated as box numbers); NCL ("[T]he only mailing address that some people have is a post office box.")

[159] MIS; Consumer; Lunde; Jaffe; Oldaker; ESPC; Bahr (noting that "junk mailers" are not required by the Postal Service to include a return address on their mail); DSA: Independent; ERA.

[160] SBA.

[161] Comerica. *See also* Visa; DoubleClick; ESPC; SIA; ABA; MasterCard; Ford Motor; Coalition; SIIA.

[162] The final Rule incorporates by reference these definitions in 316.2(m), (f), and (i).

[163] *See, e.g.*, NRF; Visa; M&F PMA; NAA; DoubleClick; MPAA; Coalition; Time Warner. Commenters tended to discuss two categories of e-mail messages: marketing campaigns that provide consideration for forwarding messages and those that do not. Of course, commenters' concerns were solely about *commercial* e-mail messages. One who transmits a non-commercial e-mail message, including a "transactional or relationship message," is not covered by most CAN–SPAM requirements.

[164] *See, e.g.*, Experian; Visa; M&F PMA; Coalition; DMA; MPA; ERA. These commenters reasoned that what begins as a message with a commercial primary purpose takes on a new *personal* primary purpose once the original recipient forwards it to friends and family. As discussed below, this argument is unavailing. Under the Act, the primary purpose of an e-mail message does not change based on the original recipient's reasons for forwarding it. If the original sender has procured the forwarding of its commercial e-mail message by intentionally paying, providing other consideration to, or inducing the original recipient to forward it, then the message retains its commercial primary purpose. If the original sender does not procure the forwarding of its message, then that entity is no longer the "sender" of that message if the original recipient forwards it to other people.

[165] These commenters' concerns regarding CAN–SPAM compliance and control over an e-mail message are not implicated in situations in which the seller/advertiser, rather than the original recipient, actually originates or transmits the message, such as when the recipient submits to the seller/advertiser a list of friends and family to receive commercial messages.

[166] *See, e.g.*, Experian; PMA; ERA.

[167] "It is unlawful for any person to *initiate* the transmission of any commercial electronic mail message to a protected computer unless the message provides (i) clear and conspicuous identification that the message is an advertisement or solicitation; (ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and (iii) a valid physical postal address of the sender." 15 U.S.C. 7704(a)(5) (emphasis

message to a person who had already sent the company an opt-out request.[168]

In contrast, a few consumers, consumer groups, and others opined that forward-to-a-friend campaigns should comply with the Act regardless of whether consideration is offered or provided for forwarding an e-mail message.[169] NCL expressed concern that these campaigns may violate the privacy rights of consumers because e-mail may be sent to consumers who have opted out of receiving e-mail from the seller. Go Daddy expressed the opinion that such campaigns should contain an opt-out mechanism that applies to the advertiser.

The analytical starting point for determining the applicability of the Act to forward-to-a-friend scenarios is the Act's definitions. CAN–SPAM's definition of " 'sender,' when used with respect to a commercial electronic mail message, means a person who *initiates* such a message and whose product, service, or Internet web site is advertised or promoted by the message." [170] The term "initiate," in turn, means "to originate or transmit such message or to *procure* the origination or transmission of such message, *but shall not include actions that constitute routine conveyance of such message.*" [171] Finally, "procure" is defined as follows: "when used with respect to the initiation of a commercial electronic mail message, ['procure'] means *intentionally to pay or provide other consideration to, or induce,* another person to initiate such a message on one's behalf." [172] By operation of these definitions, a person who intentionally pays, provides consideration to, or induces another to send on his or her behalf a commercial e-mail message that advertises or promotes his or her product may be considered to have "procured" the origination of that message under the Act, and therefore to be an initiator or sender.[173] That person is therefore legally responsible for ensuring that the message includes an opt-out mechanism and the disclosures CAN–SPAM requires,[174] and for ensuring that opt-out requests are honored.[175]

There are two words used in the definition of "procure" that need further explication—"consideration" and "induce"—because they are not defined within the Act and are key to understanding the scope of the application of the phrase "intentionally to pay or provide other consideration to, or induce" to forward-to-a-friend scenarios.

The term "consideration" is generally understood to mean "something of value (such as an act, a forbearance, or a return promise) received by a promisor from a promisee." [176] Nothing in CAN–SPAM's legislative history suggests that Congress intended any meaning different from this common legal definition of the term. Thus, where a person forwards, or uses a Web-based mechanism to transmit, a commercial e-mail message to another, the Commission believes the initiation of the message has been "procured" if the person receives money, coupons, discounts, awards, additional entries in a sweepstakes, or the like in exchange for doing so. In such cases, the seller/advertiser would be the sender or initiator and would be responsible for ensuring that the message contains the required opt-out mechanism and disclosures, and that opt-out requests are honored.

On the other hand, where there is no payment or consideration from the sender or initiator, the forwarding of the e-mail will not have been "procured" unless the recipient has been "induced" to forward the message. To *induce* means "to lead on to; to influence; to prevail on; to move by persuasion or influence." [177] "To induce" is much broader than "to pay consideration" because it does not require a transfer of something of value. Nevertheless, the modifier "intentionally" limits the verb "induce," and the Commission believes that Congress used this language to convey that to "procure," one must do something that is designed to encourage or prompt the initiation of a commercial e-mail.[178] Thus, the Commission believes that in order to "intentionally induce" the initiation of a commercial e-mail, the sender must affirmatively act or make an explicit statement that is designed to urge another to forward the message.[179]

The Commission believes that making available the means for forwarding a commercial e-mail message, such as using a Web-based "click-here-to-forward" mechanism, would not likely rise to the level of "inducing" the sending of the e-mail.[180] The Commission believes that this conduct falls within the ambit of "routine conveyance," defined as "the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message *for which another person has identified the recipients or provided the recipient addresses.*" [181] The Act specifies that "actions that constitute routine conveyance" do not constitute initiation of a commercial e-mail message.[182]

When a company makes available the means for persons to forward a commercial e-mail message—such as using a Web-based "click-here-to-forward" mechanism—the company obviously hopes that its products or services will be advertised by interested viewers.[183] Nevertheless, the Act's legislative history regarding the definition of "initiate" explains that a company is engaged in "routine

supplied). A recipient who forwards a sender's non-compliant commercial e-mail message to one or more people could also face liability as an initiator under CAN–SPAM. 15 U.S.C. 7702(9).

[168] "It is unlawful for any person to *initiate* the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that (i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received. * * *" 15 U.S.C. 7704(a)(3)(A) (emphasis supplied). A recipient who forwards a sender's non-compliant commercial e-mail message to one or more people could also face liability as an initiator under CAN–SPAM. 15 U.S.C. 7702(9).

[169] K. Krueger; NCL; Go Daddy.

[170] 15 U.S.C. 7702(16)(A) (emphasis supplied).

[171] 15 U.S.C. 7702(9) (emphasis supplied). "Routine conveyance" is defined as "the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message *for which another person has identified the recipients or provided the recipient addresses.*" 15 U.S.C. 7702(15) (emphasis supplied).

[172] 15 U.S.C. 7702(12) (emphasis supplied).

[173] This, of course, assumes that the activity in question is not routine conveyance. Activity which constitutes routine conveyance is not considered initiating or sending a commercial e-mail. 15 U.S.C. 7702(9) and (15).

[174] *See* notes 167 & 168.

[175] 15 U.S.C. 7704(a)(4).

[176] Black's Law Dictionary 300 (7th ed. 1999).

[177] *Webster's New International Dictionary* 1269 (2nd ed. unabridged 1938).

[178] For example, an e-mail message likely satisfies the Act's definition of "procure" when it includes text such as "Tell-A-Friend—Help spread the word by forwarding this message to friends! To share this message with a friend or colleague, click the 'Forward E-mail' button."

[179] In most cases, the Commission is not required to prove intent when it alleges a law violation. *See* note 45 above (Commission not required to prove sender's intent); 70 FR at 3118. However, in this case, Congress has specifically included intent as part of the definition of "procure."

[180] For example, online retailers may include in their e-mails or on their Web sites a link that simply states "E-mail to a friend." Retailers give consumers who click on such links the opportunity to forward a Web address or content on a Web site via e-mail. The Commission does not believe that these features satisfy the definition of "induce" because there is only *de minimis*, if any, persuasion or influence exerted through such a statement.

[181] 15 U.S.C. 7702(15) (emphasis supplied).

[182] 15 U.S.C. 7702(9).

[183] *See, e.g.*, Jaffe ("All companies rely heavily on their happy customers to spread the word of their products or services."); Register ("There is nothing untoward in a company asking its customers to recommend its goods and services.").

conveyance" rather than "initiating" a commercial e-mail message when it "simply plays a technical role in transmitting or routing a message and is not involved in coordinating the recipient addresses for the marketing appeal." [184] Based on this legislative history, it seems clear that a seller that simply offers a mechanism on a Web site for forwarding advertising engages in "routine conveyance" when someone other than the seller identifies the recipients or provides their addresses. It seems equally clear, however, that a seller who offers payment or other consideration to Web site visitors to use a forwarding mechanism encourages visitors to send commercial e-mail to recipients who otherwise would not receive the e-mail. In such cases, the Commission believes that the seller is "involved in coordinating the recipient addresses for the marketing appeal." Such a seller would not be entitled to avail itself of the "routine conveyance" exception to "initiate." Questions concerning the Commission's interpretation of "routine conveyance" are included in Part VII of this Notice.

B. Section 316.4—Prohibition Against Failure To Effectuate An Opt-Out Request Within Three Business Days of Receipt

Section 7704(a)(4) of the Act prohibits senders, or persons acting on their behalf, from initiating the transmission of a commercial e-mail message to a recipient more than ten business days after senders have received a recipient's opt-out request.[185] Section 7704(c)(1) of the Act empowers the Commission to modify the ten-business-day opt-out period if it "determines that a different time frame would be more appropriate after taking into account the purposes of section 7704(a); the interests of recipients of commercial electronic mail; and the burdens imposed on senders of lawful commercial electronic mail." [186] Accordingly, the ANPR asked whether ten business days is a reasonable time period for effectuating opt-out requests, or whether the Commission should shorten or lengthen the time frame.

As discussed in greater detail below, 316.4(a) of the proposed Rule tracks section 7704(a)(4) verbatim, with the exception of shortening the time period for implementation to three business days instead of ten. This proposed modification will provide enhanced protection for e-mail recipients' privacy, a key goal of section 7704(a) of the Act, and is supported by the record that current technology allows for processing such opt-out requests more expeditiously than the current ten-business-day time frame.

Section 316.4(b) of the proposed Rule provides that, when enforcing compliance with proposed 316.4(a) through an order to cease and desist or an injunction, the Commission, the Federal Communications Commission, and the attorney general, official, or agency of a State will not be required to allege or prove a defendant's state of mind as required by subsections (a)(2)–(4). Proposed 316.4(b) tracks sections 7706(e) and (f)(2) of the Act, which provide that law enforcement officials need not allege or prove a defendant's state of mind to obtain a cease and desist order or an injunction to enforce compliance with any CAN–SPAM provision that includes a state-of-mind component. The Commission proposes 316.4(b) pursuant to its rulemaking authority under section 7711(a) to "issue regulations to implement the provisions of [the] Act." [187] Proposed 316.4(b) satisfies this rulemaking standard because it will ensure that the Act's regulation of CAN–SPAM enforcement applies equally to enforcement of the Rule and the Act: Whenever a provision of the Act or the Commission's proposed Rule contains a state-of-mind component, that component is waived when a law enforcement official seeks a cease and desist order or an injunction.[188]

Below, the Commission reviews comments on the proper time limit to process opt-out requests and whether recipients' opt-out requests should expire, and explains its proposed requirement that opt-out requests be processed within three business days.

1. Commenters' Proposals Regarding the Appropriate Deadline for Effectuating an Opt-Out Request

Commenters were divided on this issue, with the majority of industry members, including small businesses, recommending that it be kept at ten business days or lengthened, and the majority of individual consumers favoring shortening the period.[189]

a. Comments Suggesting That a Ten-Business-Day Deadline for Effectuating an Opt-Out Request Is Appropriate

Nearly half of consumers who commented, and some e-mail senders who commented, indicated that ten business days is an appropriate time period for processing opt-out requests,[190] opining that this time period provides sufficient time for companies who must synchronize multiple e-mail databases, forward opt-out requests to third parties, or manually process opt-out requests.[191] Other commenters indicated that currently they are able to process opt-out requests in far fewer than ten days, but still support the ten-business-day opt-out period to provide flexibility to accommodate the various ways companies effectuate opt-out requests.[192]

b. Comments Suggesting That Ten Business Days Is Not Enough Time To Effectuate an Opt-Out Request

A substantial number of commenters proposed lengthening the deadline for effectuating an opt-out request, citing complex business arrangements, the use of third-party marketers, and the maintenance of multiple e-mail databases as reasons for doing so.[193] While the time periods proposed by commenters varied, the most common suggestion was thirty-one days.[194] Smaller numbers of commenters suggested extending the opt-out period to fifteen, twenty, or thirty days.[195] Visa suggested that rather than a "bright-line standard" for the opt-out time period, the Commission should provide senders with "flexibility that is consistent with their business operations and [opt-out] processing schedules." [196]

The ANPR posed questions about the technical procedures, and the relevant time and costs, associated with processing opt-out requests. The vast majority of commenters who responded

[184] S. Rep. 108–102, at 15.

[185] 15 U.S.C. 7704(a)(4).

[186] 15 U.S.C. 7704(c)(1).

[187] 15 U.S.C. 7711(a).

[188] Pursuant to the Act, this waiver is not available to a provider of Internet access service bringing a civil action pursuant to section 7706(g). 15 U.S.C. 7706(g).

[189] Additionally, of the 3,818 responders to the web-based questionnaire, nearly half (1,700 responders) felt that ten business days was an appropriate time period for processing opt-out requests. Thirty-eight percent (1,449 responders), however, supported shortening this time frame. Only sixteen percent (623 responders) felt that the time period should be extended.

[190] DoubleClick; ClickZ; SVM; NCL.

[191] NetCoalition; MPAA; DoubleClick.

[192] NFCU; NetCoalition; ValueClick.

[193] *See, e.g.*, DMA; ESPC.

[194] *See, e.g.*, ABM; Chamber; Wells Fargo; DMA; Piper CBA; MPA; Bankers. Several commenters argued that thirty-one days is an appropriate time period because it conforms to the recently amended Telemarketing Sales Rule, which requires telemarketers to scrub their telemarketing lists against the National Do-Not-Call Registry every thirty-one days. 69 FR 16368 (March 29, 2004).

[195] *See, e.g.*, Time Warner (recommending fifteen days); BMO (recommending twenty days); NNA (recommending thirty days); ESPC (recommending thirty days).

[196] Visa (noting that in the Gramm-Leach-Bliley Act rulemaking, the Commission ultimately determined that it is appropriate for consumers' opt-out requests to be honored "as soon as reasonably practicable").

to these questions, however, provided only the most conclusory information. For example, commenters who asserted that complex business arrangements or the use of third-party marketers impede many senders from effectuating opt-out requests within ten business days omitted details about how or why these complex arrangements affect the time and procedures involved in processing opt-out requests.[197] Nor did they specifically explain the role of third parties as they relate to maintaining and processing suppression lists. Similarly, several commenters who referred to the use of third-party e-mailers as a reason for extending the opt-out period did not specify how long it takes to transfer opt-out requests to these third parties, or the specific technical procedures involved in such a transfer.[198]

Several commenters indicated that the average time to effectuate an opt-out request "varies" or that it depends on the size and structure of the sender's business, but did not provide any specific data reflecting the minimum or maximum amount of time it can take to effectuate an opt-out request.[199] Some commenters complained that the Act's ten-business-day time frame has proven burdensome for small businesses with limited staff and resources, or those who lack an Information Technology department, yet these commenters provided no specific data justifying a longer period.[200]

The Commission received very few comments that addressed how long it takes for each step of the opt-out process.[201] Some commenters indicated that many opt-out requests are effectuated almost entirely electronically; other commenters indicated that senders often must process opt-out requests manually, and argued that such manual processing warranted extending the opt-out period.[202] These commenters did not fully explain the circumstances that would require opt-outs to be processed by hand, or precisely what such manual processing entails. As a result, the record lacks anything beyond mere assertions that complex business processes, limited resources, and manual processing may prevent senders from honoring opt-out requests within ten business days. Thus, there is insufficient basis for extending the opt-out period.

Another basis advanced to justify a longer time frame in which to process opt-out requests was the argument that additional time was necessary to enable senders to process requests that are submitted via regular mail or using a method that does not conform to the manner specified in the e-mail message.[203] The Commission notes that section 7704(a)(3)(A)(i) of the Act requires that a commercial e-mail message contain a functioning return e-mail address or *other Internet-based mechanism* that the recipient may use to submit an opt-out request, but does not require requests submitted in other ways be honored within the given time period.[204]

Another concern cited by commenters in support of a longer time period was that unavoidable technical errors occurring during the ten-business-day window could prolong the opt-out process.[205] While this may be a valid concern, the Act already contemplates such unavoidable technical anomalies. Specifically, section 7704(a)(3)(c) of the Act states that an electronic return address or other mechanism used for processing opt-out requests does not fail to satisfy the opt-out requirement if it "is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period."[206] The Commission, accordingly, believes it unnecessary to extend the opt-out period to account for technical errors.

Finally, some commenters expressed concern that if the Commission adopts an interpretation that a commercial mail message can have more than one sender, ten business days is not a sufficient time to process opt-out requests.[207] These commenters argued that under a "multiple-sender" scenario, opt-out requests would need to be communicated to each sender of any given commercial message, a process which could take longer than ten business days to complete. As noted above, the proposed modification of the "sender" definition would allow multiple advertisers in a single commercial e-mail message to establish a single "sender" for purposes of CAN–SPAM compliance. Therefore, the Commission is not inclined to extend the length of time a sender has to honor opt-out requests to address this concern.

c. Comments Suggesting That the Deadline for Effectuating an Opt-Out Request Should Be Less Than Ten Business Days

Several commenters urged the Commission to set a deadline of less than ten business days to effectuate an opt-out request, because doing so would better protect the privacy interests of e-mail recipients and because the Act's ten-business-day time frame is unnecessarily generous, given the advanced state of technology used to process opt-out requests. Specifically, some commenters expressed concerns that under the current ten-business-day time frame, senders would legally be allowed to "mail-bomb" recipients for ten business days during the opt-out period.[208] As one commenter put it, "Ten days still gives a commercial spammer a LOT of time to send junk."[209] These concerns were not supported by factual evidence that such practices actually occur, or that these practices would be eliminated by a shorter processing period. The Commission is including questions in Part VII to learn more about the volume of e-mail received from a particular sender after a recipient has submitted an opt-out request to that sender.

Several commenters stated that many senders already have the ability to process opt-out requests in far fewer than ten business days, and that many do so immediately upon receipt of such a request.[210] Go Daddy, a domain name registrar, indicated that it currently honors opt-out requests within seconds, and accordingly, recommended that the Commission shorten the opt-out period.[211] This view was supported by several other commenters who noted that opt-out requests received via an opt-out hyperlink can be added to a suppression list immediately.[212] Still other commenters pointed to currently available mailing list software which will process opt-out requests almost immediately, with delays of only

[197] *See, e.g.*, NNA; ABM.

[198] *See, e.g.*, Visa; ICC; ERA; ABM. *But see* RDS (suggesting that where third parties are used, three to five days is an appropriate time period for processing opt-out requests); Go Daddy (recommending that five days is an appropriate time frame to allow for companies that utilize third parties).

[199] Experian. Generally, commenters indicated that currently there is no industry standard for effectuating opt-out requests. *See, e.g.*, Go Daddy; ACLI.

[200] *See., e.g.*, NNA; BMO.

[201] *See* MBNA.

[202] *See, e.g.*, MPAA; IPPC; KeyCorp; MBA; BMO (suggesting that employees who send out individual commercial e-mail messages often need to collect and circulate opt-out requests manually).

[203] *See, e.g.*, ESPC; BMO; IPPC; KeyCorp; MBNA.

[204] 15 U.S.C. 7704(a)(4)(A).

[205] *See, e.g.*, AeA.

[206] 15 U.S.C. 7704(a)(3)(C).

[207] *See, e.g.*, NetCoalition; Bankers; Chamber.

[208] *See, e.g.*, Giambra; Go Daddy.

[209] Vandenberg (emphasis in original).

[210] *See, e.g.*, RDS; NFCU; NetCoalition; ValueClick.

[211] Go Daddy ("There are very little costs associated with deleting a person's e-mail address from a database, since mailing lists are almost always electronically automated.").

[212] *See, e.g.*, MBNA.

minutes, or even seconds.[213] Additionally, the Commission is aware of companies that have designed, or are developing, products geared specifically towards complying with this aspect of the CAN–SPAM Act, and which claim to be able to provide fully automated opt-out processing within minutes. Given that such products are in development, it seems likely that the market will yield additional competing technologies in the near future.

2. Commission Proposal Regarding the Appropriate Deadline for Effectuating an Opt-Out Request

Having considered the comments, the Commission believes that while the record does not demonstrate whether fears of "mail-bombing" during an opt-out period are well-founded, the fact that many commenters already are able to process opt-out requests virtually instantaneously supports the conclusion that the opt-out period can and should be shortened. The purpose of the opt-out provision in the Can–SPAM Act is to protect recipients from unwanted commercial e-mail. Given that the record suggests that nearly instantaneous processing of a recipient's request not to receive future e-mail messages can be accomplished without an undue burden,[214] the Commission believes that shortening the opt-out period to three business days is appropriate. This furthers the key policy objective underlying Can–SPAM to afford e-mail recipients maximal privacy consistent with reasonable compliance costs. The three-business-day window allows for adequate time for processing, even by those entities whose business practices or technology may not allow for instant removal of e-mail addresses submitted in opt-out requests. This proposed provision will also ensure that law enforcement officials need not allege or prove a defendant's state of mind when seeking a cease and desist order or injunctive relief to enforce compliance with 316.4(a).

3. Commenters' Suggestions Regarding Expiration of Opt-Out Requests

Several commenters noted that the Act does not indicate how long a recipient's opt-out request should remain in effect. Therefore, several commenters were concerned that senders would be required to maintain opt-out lists indefinitely.[215] Commenters argued that without limiting the duration of opt-out requests, suppression lists could grow without limit. Several commenters noted that individuals frequently change their e-mail addresses, or that e-mail addresses often become inactive from non-use, and argued that without putting a cap on the duration of opt-out lists, senders would be required to maintain lists with a potentially large percentage of inaccurate, out-of-date, or inactive e-mail addresses.[216] Therefore, commenters urged the Commission to limit how long opt-out requests remain in effect, and suggested a limit of two to three years.[217]

The Commission has carefully considered these comments, and notes that in the somewhat similar context of the National Do Not Call Registry, the duration of a person's registration is five years, or until the registrant changes his or her telephone number, or determines to take the number off the Registry.[218] In addition, other means exist to minimize the outmoded entries in the Registry—specifically, the existence of relevant databases makes it possible for the Registry's administrator periodically to purge defunct or changed telephone numbers from the Registry. In this way, the process of "scrubbing" a call list is limited so that it is no more expensive or time-consuming for industry than is necessary. The Commission is not aware of any similar databases that are available for e-mail marketers to purge defunct e-mail addresses from their distributions lists. On the other hand, the fact that an e-mail marketer's suppression list is likely to have far fewer entries than the 91 million numbers on the National Do Not Call Registry makes the prospect of "scrubbing" far less daunting, and tends to vitiate the argument for an expiration of opt-out requests after a certain period of time. Finally, Congress chose neither to impose such a time limit nor to specifically authorize the Commission to do so at this time. In view of all these considerations, the Commission has determined not to propose such a time limit. Nevertheless, the Commission is receptive to submissions of information or data that would show that a provision placing a limit on the duration of an opt-out request would be useful in implementing the provisions of the Act under section 7711(a).

C. Section 316.5—Prohibition on Charging a Fee or Imposing Other Requirements on Recipients Who Wish To Opt Out

Proposed 316.5 broadly prohibits the imposition of any fee, any requirement to provide personally identifying information (beyond one's e-mail address), or any other obligation as a condition for accepting or honoring a recipient's opt-out request. This issue was not addressed in the ANPR, but the Commission now believes it necessary, based on its observation that some senders of commercial e-mail may be encumbering recipients' Can–SPAM opt-out rights with such requirements. The Commission believes that such requirements are entirely inconsistent with the explicit Congressional policy and purposes embodied in the Act.

Section 7704(a)(3)(A) of the Act prohibits any person from initiating "a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient may use to submit * * * a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from [the] sender * * *[219] Section 7704(a)(3)(B) of the Act allows those who initiate commercial e-mail messages to comply with section 7704(a)(3)(A) "by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender."[220] Section 7704(a)(4), among other things, directs senders, and those acting on a sender's behalf, to honor recipients' opt-out preferences within ten business days of receipt of those preferences.[221]

Can–SPAM requires clear and conspicuous display of the mandatory opt-out mechanism, but imposes no further explicit requirements regarding the manner in which initiators of commercial e-mail comply with these provisions. Nevertheless, the whole thrust of the Act is to ensure recipients can opt out of receiving subsequent

[213] Satchell; K. Kreuger.

[214] *See, e.g.*, Go Daddy.

[215] *See, e.g.*, Wells Fargo; Experian; Coalition.

[216] Piper.

[217] CBA; DMA.

[218] 68 FR 4640 (Jan. 29, 2003).

[219] 15 U.S.C. 7704(a)(3)(A).

[220] 15 U.S.C. 7704(a)(3)(B).

[221] *See* 15 U.S.C. 7704(a)(4)(A). As was explained above, the Commission is proposing to shorten the amount of time senders, and those acting on the sender's behalf, have to honor recipients' opt-out request to three business days. *See* proposed 16 CFR 316.4.

commercial messages from any sender. Indeed, the sole purpose of the Act's opt-out provisions is to protect recipients' privacy from senders of unwanted commercial e-mail; it would be a complete subversion of this privacy protection to allow senders to compel recipients to disclose personally identifying information as the price of opting out. Accordingly, the Commission believes that an e-mail recipient's ability to submit an opt-out request should not be encumbered by any extraneous requirements.

Proposed 316.5 provides: "Neither a sender nor any person acting on behalf of a sender may require that any recipient pay any fee, provide any information other than the recipient's electronic mail address and opt-out preferences, or take any other steps except sending a reply electronic mail message or visiting a single Internet web page, in order to: (a) Use a return electronic mail address or other Internet-based mechanism, required by 15 U.S.C. 7704(a)(3), to submit a request not to receive future commercial electronic mail messages from a sender; or (b) have such a request honored as required by 15 U.S.C. 7704(a)(3)(B) and (a)(4)."

The Commission intends that this proposed provision apply to all parties involved in processing recipients' opt-out requests: senders of commercial e-mail, those who initiate commercial e-mail, and any third parties that provide assistance to senders in receiving and honoring recipients' opt-out requests. As was explained above, this proposal prohibits these parties from charging a fee to submit an opt-out request, from collecting any information about a recipient other than his or her e-mail address and opt-out preferences,[222] and from requiring recipients to visit more than one Web page to submit an opt-out request.

CAN–SPAM's legislative history supports this proposed regulation. Congressman W. J. (Billy) Tauzin stated that "We intend that senders of commercial e-mail provide a convenient, clear and simple way for consumers to opt-out of commercial e-mail." [223] The Commission's proposal furthers this intent. An opt-out mechanism that requires a fee, unnecessary disclosure of personal information, or access to multiple Web pages would be inconsistent with the demand for a "convenient, clear and simple" opt-out mechanism.[224] This proposal also responds to the concerns of the commenter who argued against burdensome opt-out procedures.[225]

As noted above, the Commission is aware that some e-mail marketers are attempting to use the CAN–SPAM opt-out mechanism as an opportunity to collect information about recipients or to subject them to sales pitches before an opt-out request is completed. Conceivably, some e-mail marketers could even attempt to charge recipients a fee for accepting or honoring their opt-out requests. All of these encumbrances are unacceptable, and, pursuant to section 7711 of the Act, which authorizes the Commission to "issue regulations to implement the provisions of [the] Act," [226] the Commission proposes a rule provision that would prohibit these encumbrances.

The prohibitions proposed in this rule provision are not intended to impose any new burden on e-mail marketers beyond those already imposed by CAN–SPAM. Nothing on the record suggests a need or justification for e-mail senders to charge recipients a fee to process opt-out requests. Moreover, there appears to be no reason why an e-mail sender would need to collect any information about a recipient other than his or her e-mail address and opt-out preferences in order to process that opt-out request because, according to CAN–SPAM, opt-out requests are specific to a recipient's *e-mail address*, not his or her name. Finally, the Commission believes that e-mail senders should be able to get all the opt-out information they need from a recipient—namely, the recipient's e-mail address and opt-out preferences—in a single Web page. Requiring a recipient to visit multiple Web pages would frustrate recipients' ability to exercise their opt-out rights under CAN–SPAM, and that is clearly contrary to congressional intent. In Part VII below, the Commission asks questions requesting information regarding this proposed rule provision.

D. Section 7704(c)(2)—Aggravated Violations Relating to Commercial E-mail

Committing an aggravated violation along with a violation of section 7704(a) could subject a defendant to triple damages in a CAN–SPAM enforcement action by a state or an ISP.[227] Section 7704(b) of the Act lists four practices which are to be considered "aggravated violations." [228] According to a Senate Committee Report on an earlier version of the Act, designating specific practices as "aggravated" violations is intended to "apply to those who violate the provisions of the bill while employing certain problematic techniques used to either generate recipient e-mail addresses, or remove or mask the true identity of the sender." [229]

Section 7704(c)(2) of the Act authorizes the Commission to specify activities or practices—in addition to the four already enumerated in the statute—as aggravated violations if the Commission determines that "those activities or practices are *contributing substantially to the proliferation of commercial electronic mail messages* that are unlawful under section 7704(a) of the Act." (Emphasis supplied.) Some commenters suggested additional practices that warrant designation as "aggravated violations." After reviewing the comments, the Commission is not inclined to expand the list of aggravated violations because the practices cited by commenters are either already prohibited by the Act, or implicate persons other than those who violate section 7704(a) of the Act and who are therefore beyond the reach of section 7704(c)(2). These proposals are discussed immediately below. Two proposals addressed individually below, regarding manual e-mail address harvesting and exchange of open proxy lists, are not illegal. Nevertheless, the Commission is not inclined to create new aggravated violations regarding these practices.

1. Commenters' Proposals Regarding Aggravated Violations

Numerous commenters recommended that the Commission designate as aggravated violations practices that already are prohibited by other provisions of the CAN–SPAM Act,

[222] The concept of opt-out preferences is introduced in section 7704(a)(3)(B). Pursuant to that provision, people who initiate commercial e-mail messages may ask recipients to specify which types of commercial e-mail they do and do not want from a sender.

[223] Hon. W. J. (Billy) Tauzin, Cong. Rec. E74 (Jan. 28, 2004) (Extension of remarks).

[224] The findings Congress incorporated in the Act reflect concern about the costs that spam imposes on unwilling recipients: "The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who *incur costs* for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both." 15 U.S.C. 7701(a)(3) (emphasis supplied). This concern supports the Commission's proposal to prohibit charging or otherwise encumbering the opt-out rights that the Act creates.

[225] *See* O'Connor.

[226] 15 U.S.C. 7711.

[227] 15 U.S.C. 7706(f)(3)(C), (g)(3)(C).

[228] The four practices are: (1) automated e-mail address harvesting; (2) dictionary attacks; (3) automated creation of multiple e-mail accounts; and (4) relay or retransmission of a commercial e-mail message through unauthorized access.

[229] S. Rep. No. 108–102, at 6.

including "spoofing," [230] obscuring the origin of an e-mail message, falsifying header information, using non-functional opt-out addresses, and transferring e-mail addresses of persons who have opted-out.[231] Because all of these practices are already prohibited by the Act,[232] designating them as aggravated violations is unnecessary and would neither give greater protection to consumers nor provide a significant new tool to law enforcement. Some commenters urged the Commission to prohibit inaccurate "Whois" information.[233] For example, Microsoft, among others, urged that registering a domain name with false or misleading information be added as an aggravated violation.[234] The Commission believes this is already prohibited by the Act. *See* 15 U.S.C. 7704(a)(1)(A) (prohibiting initiation of any e-mail message that includes an originating e-mail address or a domain name that "was obtained by means of false or fraudulent pretenses or representations").[235]

A number of commenters suggested that the Commission consider including as an aggravated violation intentionally crafting the content of e-mail messages specifically to evade spam filters.[236] Some commenters mentioned in particular the technique of "hashbusting," where random characters or words are intentionally inserted into the body and/or subject line of the e-mail.[237] Such techniques often go hand-in-hand with other stratagems for hiding the true identity of the sender.[238]

The Commission's view is that hashbusting in the subject line would likely be covered under section 7704(a)(2) of the Act, which prohibits the initiation of any commercial e-mail message where the initiator of that message "has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message." Hashbusting is prohibited under this section because using random characters and meaningless words in a message's subject line can prevent recipients from determining a message's purpose.

The Commission shares the concerns of commenters about hashbusting and like techniques in the body of commercial e-mail messages, the apparent purpose of which is to mislead recipients and frustrate their efforts to filter out unwanted messages. Nevertheless, adding as an aggravated violation the crafting of the content of commercial e-mail messages to evade spam filters appears to be unworkable. Drawing a bright line to distinguish permissible content from content that would violate the Act is fraught with practical difficulties and potentially presents difficult First Amendment issues. Nevertheless, the Commission includes questions in Part VII of this NPRM to solicit further data regarding the prevalence of inserting obfuscating content into commercial e-mail solely to evade spam filters, and to seek views as to whether, as a practical matter, a bright-line guide could be drawn.

A number of commenters complained about various practices that cause annoyance for them in using their computers and requested that such practices be included as aggravated violations. The practices commenters mentioned most often were distributing viruses,[239] hijacking browsers (in other words, manipulating a computer user's ability to navigate the Internet), and using pop-up advertisements.[240] Section 7704(a)(1)(C) already prohibits knowingly using a protected computer to relay or retransmit a commercial or "transactional or relationship" message for purposes of disguising the message's origin.[241] Thus, using a computer virus to route messages through someone else's computer is unlawful when doing so disguises a message's origin. Also, CAN–SPAM only reaches e-mail messages that satisfy the Act's definitions of "commercial electronic mail message" or "transactional or relationship message." At this time, it is not clear that a message that does no more than distribute a computer virus would satisfy either of these definitions and thus be regulated by CAN–SPAM. Pop-ups and Web browser highjacking are doubtless annoying to consumers, but, based on the record compiled thus

[230] "Spoofing" is defined as disguising an e-mail to make it appear to come from an address from which it actually did not originate, such as placing another user's address in the "from" or "reply-to" lines. *See FTC* v. *GM Funding, Inc.*, SACV 02–1026 (C.D. Cal. filed Nov. 6, 2002).

[231] Richardson (obscuring origin of e-mail); Csorba (forged headers; invalid opt-out); Calvert (non-functional opt-out); Freese (non-functioning opt-out); Safell (spoofing); Innovation (false identification of sender); NetCoalition (deceptive header information); KALRES (mailing after opt-out request); EDC (automated harvesting); Moerlien; St. Saveur; O'Connor; Rospenda; ClickZ; Jensen; Mead; B. Krueger; Discover (transferring e-mail addresses).

[232] *See* section 7704(a)(1)(C) (prohibiting header information that "fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin"); section 7704(a)(3) (prohibiting initiation of an e-mail message that does not include a functioning opt-out mechanism); and section 7704(a)(4)(A)(iv) (prohibiting the sale, lease, exchange, transfer, or release of the e-mail address of any person who has opted-out).

[233] "Whois" is an Internet program that allows users to query a database of people and other Internet entities, such as domains, networks, and hosts. "Whois" databases are maintained generally by the registrars. "Whois" data includes the registrant's company name, address, phone number, and e-mail address.

[234] Microsoft; St. Sauveur. *See also* Truth (suggesting ways that accurate Whois information can be used to prevent fraudulent credit card transactions). The Commission has provided testimony to the U.S. House of Representatives Judiciary Committee; Subcommittee on Courts, The Internet, and Intellectual Property regarding the critical importance of accurate Whois information to the integrity of the Internet. *See Accuracy of "WHOIS" Internet Database Essential to Law Enforcement, FTC Tells Congress*, May 22, 2002, available at *http://www.ftc.gov/opa/2002/05/whois.htm*.

[235] *See FTC* v. *Global Net Solutions, Inc., et al.*, CV–S–05–0002–PMP (LRL) (D. Nev. filed Jan. 3, 2005) (alleging that, among other things, the defendants violated 15 U.S.C. 7704(a)(1) of CAN–SPAM by initiating commercial e-mail containing an originating e-mail address that was obtained through false representations to the e-mail service provider).

[236] St. Saveur; Danko; ClickZ; Lunde; NetCoalition.

[237] The technique of inserting sometimes strangely eloquent nonsense is favored by spammers as an effective way of defeating spam filters that convert e-mail into "hashes" (where characters in words are converted into numbers) (*see, e.g., http://razor.sourceforge.net*) or spam filters that use Bayesian statistical analysis (*see, e.g., http://spamassassin.org*). Computer programs, also known as "Chomskybots," can automatically generate such paragraphs.

[238] *See National Do Not E-mail Registry, A Report To Congress*, FTC, June 2004, at 8 (spammers use many techniques to hide including: spoofing, open relays, open proxies, and zombie drones). Available at *http://www.ftc.gov/reports/dneregistry/report.pdf*.

[239] A "virus" is a program or piece of code that is loaded onto one's computer without one's knowledge and runs against one's wishes. Computer viruses can replicate themselves and will quickly use all available computer memory. Some viruses are capable of transmitting themselves across networks and bypassing security systems. *See, e.g., http://www.webopedia.com/TERM/V/virus.html*. Computer viruses comprise a class of "malicious code" that can include Trojan horses and worms. A "Trojan horse" is a destructive program that masquerades as a benign application. Unlike viruses, Trojan horses do not replicate themselves but can be just as destructive. One of the most insidious types of Trojan horse is a program that claims to rid your computer of viruses but instead introduces viruses onto your computer. *See, e.g., http://www.webopedia.com/TERM/w/worm.html*. A worm is a special type of virus that can replicate itself and use memory, but cannot attach itself to other programs. *See, e.g., http://www.webopedia.com/TERM/T/Trojan_horse.html*.

[240] Richardson; St. Saveur; Keef; ClickZ; Rospenda; Keogh; K. Krueger; Vowles; Maat; B. Krueger.

[241] 15 U.S.C. 7704(a)(1)(C). Moreover, section 7704(b)(1)(A)(3) provides: "It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under [section 7704(a)] from a protected computer or computer network that such person has accessed without authorization." 15 U.S.C. 7704(b(1)(A)(3).

far in this proceeding, these specific practices do not appear to be contributing substantially to the proliferation of commercial e-mail messages that are prohibited under section 7704(a) of the Act. Where appropriate, however, the Commission will challenge these practices under section 5 of the FTC Act.[242]

2. Manual E-mail Address Harvesting

A coalition of four domain name registrars requested that the Commission consider adding as an aggravated violation the manual harvesting of e-mail addresses.[243] The Act itself designates the *automated* harvesting of e-mail addresses as an aggravated violation. The record amassed to date does not document that manual e-mail address harvesting is a practice that meets the standard specified in CAN–SPAM to be designated as an aggravated violation—*i.e,* there is insufficient evidence that it contributes substantially to the proliferation of unlawful commercial e-mail messages. Therefore, the Commission has not adopted this suggestion, but includes questions in Part VII of this NPRM to solicit further data regarding the prevalence of this practice and to determine whether the manual harvesting of e-mail addresses is contributing substantially to the proliferation of commercial e-mail messages that are prohibited under section 7704(a) of the Act.

3. Open Proxy Lists

Open proxy lists, which are readily available for purchase on the Internet,[244] provide the Internet Protocol address and/or the fully qualified domain name of any computer through which e-mail messages can be routed. Microsoft proposed that the Commission consider adding the sale of such lists as an aggravated violation:

> Although the CAN–SPAM Act prohibits the practice of relaying spam through open proxies, drones, or other protected computers, it does not prohibit the means by which spammers can obtain information about these computers. A regulation that prohibits the sale [of lists of such devices] would be a natural analog to Section [7704](b)(1)(A), which creates an aggravated violation for persons who "assist in the transmission" of spam through the sale or distribution of harvested e-mail addresses.[245]

Although the Commission believes that Microsoft has a good point, and that this practice serves no legitimate purpose and materially advances the proliferation of spam, the Commission so far has no information showing that the sellers of open proxy lists are the same individuals engaged in sending spam, and violating section 7704(a). If they are not, it would be of dubious value to make the sale of open proxy lists an aggravated violation because an aggravated violation only comes into play in situations where a defendant also is violating section 7704(a). Furthermore, the Commission believes that to *use* an open proxy list may already be an aggravated violation under the Act. Section 7704(b)(3) of the Act states, "It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization." [246] As stated above, the purpose of an open proxy is to relay e-mail through a third party's server (a proxy server) so that the recipient cannot trace the sender of the e-mail. Such proxies are almost always accessed without the authorization of the proxy's system administrator.[247] Nevertheless, the Commission seeks additional information on the sale of open proxy lists to determine whether such sales "are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under [section 7704(a) of the Act]." [248] Specifically, the Commission seeks comment on whether prohibiting such sales would give a useful new tool to law enforcement to target unlawful commercial e-mail.

III. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this NPRM. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by June 27, 2005.

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) ("PRA"), the Commission has reviewed the proposed Rule. The proposed Rule does not impose any recordkeeping, reporting, or disclosure requirements or otherwise constitute a "collection of information" as it is defined in the regulations implementing the PRA. *See* 5 CFR 1320.3(c).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission requested comment in the ANPR regarding whether CAN–SPAM regulations would have a significant economic impact on a substantial number of small entities. Although the Commission received very few responsive comments, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis.

A. Reasons for the Proposed Rule

The proposed Rule is advanced pursuant to the Commission's mandate under the CAN–SPAM Act, 15 U.S.C. 7701–7713. The Act seeks to ensure that senders of commercial e-mail not mislead recipients as to the source or content of such messages, and to ensure that recipients of commercial e-mail have a right to decline to receive additional commercial e-mail from a particular source. In that regard, section 7702(2)(C) of the Act requires the Commission to issue regulations defining the relevant criteria to facilitate the determination of whether the primary purpose of an electronic mail message is to advertise or promote a product or service, and is therefore

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[242] The Commission has alleged, *inter alia,* that in some instances, pop-ups and Web browser hijacking (a/k/a mouse trapping) may interfere with a user's computer. *See, e.g., FTC* v. *D Squared Solutions LLC,* No. 03–CV–3108 (D. Md. 2003) (pop-ups unfairly interfered with computer use); *FTC* v. *Carlos Pereira,* No. 99–1367–A (E.D. Va. 1999) (manipulating normal functioning of Web browser is unfair).

[243] Register.

[244] *See, e.g., http://www.openproxies.com.* Some Web sites offer a small quantity of "free" open proxies but those open proxies have limited value to spammers. For example, the cited Web site offers ten free, but slow, open proxies. A slow open proxy has marginal value to someone who wants to send bulk e-mail because slow connections use too many computer resources. To obtain a list of quality fast open proxies, one must pay a monthly fee.

[245] Microsoft.

[246] 15 U.S.C. 7704(b)(3).

[247] *See http://www.lurhq.com/proxies.html* (most proxies are not supposed to be public).

[248] 15 U.S.C. 7704(c)(2).

commercial.[249] The Act also authorizes the Commission, at its discretion and subject to certain conditions, to promulgate regulations expanding or contracting the categories of "transactional or relationship messages";[250] modifying the ten-business-day period prescribed in the Act for effectuating a recipient's opt-out request;[251] and specifying additional activities or practices as "aggravated violations."[252] The Act also authorizes the Commission to "issue regulations to implement the provisions of [the] Act."[253]

B. Statement of Objectives and Legal Basis

The objective of the proposed Rule is to implement the CAN–SPAM Act, 15 U.S.C. 7701–7713. The proposed Rule provisions introduced in this NPRM add a definition of the term "person"; limit the definition of "sender"; clarify that Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations are "valid physical postal addresses"; shorten the time a sender has to effectuate a recipient's opt-out request; and clarify that a recipient may not be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to submit a valid opt-out request. The legal basis for the proposed Rule is the CAN–SPAM Act, 15 U.S.C. 7701–7713.[254]

C. Description of Small Entities To Which the Proposed Rule Will Apply

The proposed Rule, which incorporates by reference many of the definitions of the CAN–SPAM Act, applies to "senders" of "commercial electronic mail messages" and, to a lesser extent, to "senders" of "transactional or relationship messages."[255] Under the Act, and the proposed Rule, a "sender" is "a person who initiates [a commercial electronic mail message] and whose product, service, or Internet Web site is advertised or promoted by the message."[256] To "initiate" a message, one must "originate or transmit such message or * * * procure the origination or transmission of such message."[257] The Act does not consider "routine conveyance" (defined as "the transmission, routing, relaying, handling, or storing through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses") to be initiation.[258]

Any company, regardless of industry or size, that sends commercial e-mail messages or transactional or relationship messages would be subject to the proposed Rule. This would include entities that use e-mail to advertise or promote their goods, services, or Web sites, as well as entities that originate or transmit such messages. Therefore, numerous small entities across almost every industry could be subject to the proposed Rule. For the majority of entities subject to the proposed Rule, a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or who has fewer than 500 employees.[259]

Although it is impossible to identify every industry that sends commercial e-mail messages or transactional or relationship messages, some surveys suggest that an ever-increasing number are using the Internet. A recent Harris Interactive poll, for example, found that about seventy percent of small businesses have an online presence, or plan to have one by 2005.[260] A 2001 study by the National Federation of Independent Business found that, at that time, fifty-seven percent of all small employers used the Internet for business-related activities.[261] While these statistics do not quantify the number of small businesses that send commercial e-mail messages or transactional or relationship messages, they suggest that many small businesses are using the Internet in some capacity. The Commission is aware of at least one survey that suggests that eighty-five percent of small businesses surveyed communicate with existing customers via e-mail, and sixty-seven percent of small businesses communicate with potential buyers via e-mail.[262]

Given the paucity of data concerning the number of small businesses that send commercial e-mail messages or transactional or relationship messages, it is not possible to determine precisely how many small businesses would be subject to the proposed Rule. Accordingly, the Commission believes that a precise estimate of the number of small entities subject to the proposed Rule is not currently feasible, and specifically requests information or comment on this issue.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed Rule would not impose any specific reporting, recordkeeping, or disclosure requirements within the meaning of the Paperwork Reduction Act. Because the CAN–SPAM Act establishes a comprehensive regulatory scheme for commercial and transactional or relationship e-mail messages, and because the Act is enforceable by the FTC as though it were an FTC Trade Regulation Rule, the proposed Rule primarily clarifies the scope of certain definitions within the Act. Specifically, the proposed Rule defines one new term, "person"; limits the definition of "sender"; and clarifies that Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations are "valid physical postal addresses." The proposed Rule also clarifies that a recipient may not be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to submit a valid opt-out request. Only one provision of the proposed Rule imposes substantive compliance obligations, and the Commission does not believe that that provision is likely to impose a substantial impact on significant numbers of small entities. The proposed Rule would require senders to honor recipients' opt-out requests within three

[249] On January 19, 2005, the Commission published a Federal Register Notice promulgating Rule provisions addressing the statutory mandate to establish criteria for determining the primary purpose of an e-mail message. *See* 16 CFR 316.3.

[250] 15 U.S.C. 7702(17)(B).

[251] 15 U.S.C. 7704(c)(1)(A)–(C).

[252] 15 U.S.C. 7704(c)(2).

[253] 15 U.S.C. 7711(a).

[254] Specifically, the authority to modify the ten-business-day period prescribed in the Act for honoring a recipient's opt-out request is 15 U.S.C. 7704(c)(1)(A)–(C). The Act also grants the Commission broad authority to "issue regulations to implement the provisions of [the] Act." 15 U.S.C. 7711(a).

[255] One provision, section 7704(a)(1), which prohibits false or misleading transmission information, applies equally to "commercial electronic mail messages" and "transactional or relationship messages"; otherwise, CAN–SPAM's prohibitions and requirements cover only "commercial electronic mail messages."

[256] 15 U.S.C. 7702(16)(A); Proposed Rule 316.2(m).

[257] 15 U.S.C. 7702(9).

[258] 15 U.S.C. 7702(9), (15).

[259] These numbers represent the size standards for most retail and service industries ($6 million total receipts) and manufacturing industries (500 employees). A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/size/summary-whatis.html*. SBA's comment estimates that there are 22.9 million small businesses in the U.S.

[260] *See http://www.ecommercetimes.com/story/35004.htm.*

[261] *See http://www.nfib.com/object/2937298.html.*

[262] *See* Electronic Commerce News, Mar. 15, 2004, "Gearing Up for Next Front in the War on Spam." SBA studies similarly show that eighty-three percent of small businesses use e-mail.

business days rather than the ten business days that the Act would otherwise allow.[263] The Commission anticipates that, in some cases, senders of commercial e-mail may need to purchase software, use an appropriate e-mail service provider, or adopt other business practices or policies to ensure that recipients' opt-out requests are honored. As discussed earlier, comments suggest that software for this purpose is commercially available, is widely used already, and can process opt-out requests instantaneously.[264] If so, the proposal to allow three business days rather than ten for processing opt-out requests would not seem to increase or otherwise adversely affect such compliance costs. Moreover, because the Commission believes legitimate senders may be honoring their recipients' opt-out requests within the proposed three-business-day time frame, the Commission questions whether the proposed Rule imposes any compliance costs beyond those already incurred in the ordinary course of business. The Commission seeks comment and information on software, labor, professional, or other relevant compliance cost issues, if any.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

The FTC has not identified any other federal statutes, rules, or policies that would conflict with the proposed Rule's provisions, which, as noted above, add a definition of the term "person"; limit the definition of "sender"; clarify that Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations are "valid physical postal addresses"; shorten the time a sender has to honor a recipient's opt-out request; and clarify that a recipient may not be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to submit a valid opt-out request.

The FTC seeks comment and information about any statutes or rules that may conflict with the proposed requirements, as well as any other state, local, or industry rules or policies that may overlap or conflict with the requirements of the proposed Rule.

F. Discussion of Significant Alternatives

As discussed above, the CAN–SPAM Act primarily seeks to ensure that senders of commercial e-mail not mislead recipients as to the source or content of such messages, and to ensure that recipients of commercial e-mail have a right to decline to receive additional commercial e-mail from a particular source. The Act, not the proposed Rule, imposes these obligations. The Commission nonetheless has considered and is proposing to adopt clarifications of the statutory definitions suggested in comments by the SBA and other entities advocating on behalf of small business interests, particularly the definitions of "sender" and "valid physical postal address." Although the definitions do not impose any compliance burden, the proposed clarifications should help avoid legal or other costs that could otherwise result from uncertainty, if any, about what the proposed Rule covers or requires. As already noted, the Commission is inviting comment on these proposed definitions, including any alternatives that might help further explain or articulate their meaning and scope, consistent with the Act's definitions of those terms. In addition, as explained earlier, the Commission has also considered alternatives to the compliance requirements for receiving and honoring recipients' opt-out requests in deciding to propose: (1) A three-business-day period for honoring opt-out requests rather than the maximum ten-business-day period otherwise allowed under the Act; and (2) a prohibition on e-mail senders' ability to collect a fee, require submission of information other than a recipient's e-mail address and opt-out preferences, or require a recipient to take any steps other than sending a reply e-mail message or visiting a single Internet Web page to submit a valid opt-out request. The Commission believes the proposed alternatives are more likely to protect recipients from unwanted commercial e-mail and, thus, would more fully effectuate the purposes of the Act. Moreover, as noted earlier, the Commission believes the proposed alternatives will not substantially increase compliance costs because of the availability of commercial software that can process opt-out requests well within the proposed compliance period for businesses that send e-mail on their own behalf, and for e-mail service providers who send bulk e-mail on behalf of others, and because the Commission is only proposing to prohibit the extraneous encumbrance of a recipient's ability to submit an opt-out request. Nevertheless, the FTC seeks comment on significant alternatives, if any, to the proposed compliance period and the proposed governance of how opt-out requests are submitted that would further minimize any compliance costs, consistent with the purposes of the CAN–SPAM Act.

VII. Questions for Comment on the Proposed Rule

The Commission seeks comment on various aspects of the proposed Rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

A. General Questions for Comment

Please provide comment, including relevant data, statistics, or any other evidence, on each proposed change to the Rule. Regarding each proposed provision commented on, please include answers to the following questions:

1. What is the effect (including any benefits and costs), if any, on consumers?

2. What is the impact (including any benefits and costs), if any, on individual firms that must comply with the Rule?

3. What is the impact (including any benefits and costs), if any, on industry?

4. What changes, if any, should be made to the proposed Rule to minimize any cost to industry or consumers?

5. How would each suggested change affect the benefits that might be provided by the proposed Rule to consumers or industry?

6. How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

B. Questions on Proposed Specific Provisions

In response to each of the following questions, please provide: (1) detailed comment, including data, statistics, and other evidence, regarding the issue referred to in the question; (2) comment as to whether the proposals do or do not provide an adequate solution to the issues they were intended to address, and why; and (3) suggestions for changes that might better maximize consumer protections or minimize the burden on industry.

[263] 15 U.S.C. 7704(a)(4).

[264] *See generally* Part II.B.1.c. above. For example, Go Daddy stated: "There are very little costs associated with deleting a person's e-mail address from a database, since mailing lists are almost always electronically automated." *See also* RDS; NFCU; NetCoalition; ValueClick (indicating that opt-out requests are already being processed quickly).

1. Section 316.2—Definitions

a. Does the proposed definition of "person" clarify those individuals and entities that are covered by the Rule and the Act? Should the proposed definition be modified? If so, how?

b. Does the proposed definition of "sender" clarify who will be responsible for complying with the CAN–SPAM Act when a single e-mail contains content promoting or advertising the products, services, or Web sites of multiple parties? Should the proposed definition be modified? If so, how? Do the proposed criteria provide adequate guidance to establish who is the sender when there are multiple advertisers?

c. Should opt-out obligations be extended to third-party list providers who do nothing more than provide a list of names to whom others send commercial e-mails? If so, how could this be accomplished, given the statutory language which defines "sender" in terms of an entity that both initiates a message *and* advertises its product, service, or Internet web site in the message?

d. Should the Commission adopt a "safe harbor" with respect to opt-out and other obligations for companies whose products or services are advertised by affiliates or other third parties? If not, why not? If so, what would be appropriate criteria for such a safe harbor?

e. Does the proposed definition of "valid physical postal address" clarify what will suffice under the Act's requirement that a sender include such an address in a commercial e-mail? Should the proposed definition be modified? If so, how?

f. Should CAN–SPAM apply to e-mail messages sent to members of online groups? What types of online groups exist? How are they formed? Does formation typically address the use of unsolicited commercial e-mail with respect to the group? How are e-mail messages transmitted or posted to an online group? Should members be able to opt out of unwanted commercial messages while continuing to receive messages relating to the subject matter of the group? Does this analysis change depending on whether the message is sent by a group member or a source outside the group? Does this analysis change depending on whether the message is unrelated to the subject matter of the online group? Does this analysis change if the online group has a moderator who decides which messages to forward to the group?

2. Section 316.2(o)—"Transactional or Relationship Message"

a. If an e-mail message contains only a legally mandated notice, should this message be considered a transactional or relationship message? Which, if any, of the existing categories of transactional or relationship message would such a message likely fit into? If such a message were considered not to have a transactional or relationship purpose, would it be exempt from regulation under the Act?

b. Should debt collection e-mails be considered "commercial"? Or, should debt collection e-mails be considered transactional or relationship messages that complete a commercial transaction that the recipient has previously agreed to enter into with the sender? Such an interpretation assumes that the entity with whom the recipient transacted business is the entity sending the collection e-mail, or that the term "sender" can be interpreted to encompass a third party acting on behalf of one who would otherwise qualify as a sender. Can a third-party debt collector be considered a "sender"?

c. Are there any messages that fall outside of the reach of the proposed Rule that should not? If so, how might this be remedied?

d. Can a "commercial transaction" under section 7702(17)(A)(i) exist even in the absence of an exchange of consideration?

e. If the primary purpose of an e-mail message is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender, it is a transactional or relationship message under section 7702(17)(A)(i). Should messages from affiliated third parties that purport to be acting on behalf of another entity (the one with whom the recipient transacted) be considered transactional or relationship messages under this provision?

f. Under what, if any, circumstances should an e-mail message sent to effectuate or complete a negotiation be considered a "transactional or relationship message" under section 7702(17)(A)(i)?

g. Is it appropriate to classify messages offering employee discounts or other similar messages as transactional or relationship messages that "provide information directly related to an employment relationship"? Is a relevant factor the employer's provision of the e-mail address to which such messages are sent to the employee? For example, should all messages sent from an employer to an employee at the employer-provided e-mail address be considered transactional or relationship under section 7702(17)(A)(iv)?

h. The Commission believes that an e-mail message sent on behalf of a third party, even with the permission of an employer, is not "transactional or relationship." Is there any such scenario in which the e-mail message at issue could be considered "transactional or relationship"? If so, explain.

i. For purposes of section 7702(17)(A)(iv) of the Act, should "provid[ing] information directly related to an employment relationship" include providing information related to such a relationship after an offer of employment is tendered?

j. Where a recipient has entered into a transaction with a sender that entitles the recipient to receive future newsletters or other electronically delivered content, should e-mail messages the primary purpose of which is to deliver such products or services be deemed transactional or relationship messages?

k. Should the Commission modify the Act's definition of "transactional or relationship message" to include what some commenters call "business relationship messages," which are individualized messages that are sent from one employee of a company to an individual recipient (or a small number of recipients)? If so, what changes in e-mail technology and practices warrant this, and is such a modification necessary to accomplish the purposes of the Act?

l. The Commission believes that e-mail messages from an association or other membership entity to its membership are likely "transactional or relationship" in nature, pursuant to section 7702(17)(A)(v). Should messages from such senders to *lapsed* members also be considered "transactional or relationship" under that section? Should such messages to lapsed members be considered "commercial" when they advertise or promote the membership entity?

3. "Forward-To-A-Friend" E-mail Messages

a. Does the Commission's discussion in this NPRM of the Act's definitions of "initiate," "procure," and "sender" provide sufficient guidance to industry and consumers? Does the Commission's explication of the term "induce" provide sufficient guidance to industry and consumers? Does the Commission's discussion of "routine conveyance" provide sufficient guidance to industry and consumers? Does the Commission's interpretation of any of these terms impose any undue burdens on industry or consumers?

b. Are there other forwarding mechanisms not discussed in this notice that should be considered "routine conveyance"? Are there other forwarding mechanisms that should *not* be considered "routine conveyance"?

c. Does the Commission's reading of "procure" to mean something that entails either payment of consideration or some explicit affirmative action or statement designed to elicit the initiation of a commercial e-mail message provide sufficient guidance to industry and consumers? Why or why not?

d. Are there circumstances in which a seller could offer consideration to a person to forward a commercial e-mail that should be included within the "routine conveyance" exception?

e. Does the Commission's position on "routine conveyance" provide industry with sufficient guidance concerning Web-based forwarding mechanisms? Does it impose any undue burdens on industry or consumers?

4. Section 316.4—Prohibition Against Failure To Honor Opt-Out Requests Within Three Business Days of Receipt

a. Is three business days an appropriate deadline for effectuating an opt-out request? If not, what time frame would be more appropriate? Does the Commission's proposal that multiple advertisers in a single commercial e-mail message may arrange to have only one of those advertisers be the "sender" affect what time frame would be appropriate? If so, how?

b. Are some commenters' concerns warranted that under the original ten-business-day provision senders would be permitted to bombard a recipient with e-mail for ten business days following his or her opt-out request? Why or why not? Is this a commonly-occurring practice? If so, what is the evidence supporting this? Providing as much detail as possible, explain whether recipients continue to receive commercial e-mail from a particular sender after submitting an opt-out to that sender. For example, are recipients who submit opt-out requests *targeted* for receipt of additional commercial e-mail? How likely are recipients to continue to receive additional commercial e-mail from a particular sender within ten business days after submission of an opt-out request? How likely *after* ten business days?

c. Some commenters indicated that there are several software products on the market that can effectuate opt-out requests almost immediately. Are such products widely or currently used by e-mail senders? Are these products affordable for small entities? What are the costs and benefits of using such products?

d. What specific technical procedures are required to suppress a person's e-mail address from a sender's directory or distribution list? What are the specific time requirements and costs associated with those procedures? What, if any, manual procedures are required to suppress a person's e-mail address from a sender's directory or distribution list? What, if any, costs are associated with the manual suppression of e-mail addresses? How do such costs compare with costs associated with electronic processing? What, if any, circumstances would require manual processing of opt-out requests? How prevalent is the use of manual procedures to suppress people's e-mail addresses from a sender's directory or list? What are the characteristics of senders that use manual procedures to process opt-out requests? What are the characteristics of senders that use electronic procedures to process opt-out requests? Do small entities process opt-out requests manually or electronically?

e. In marketing agreements involving the use of third parties, what typically is the role of each third party in processing an opt-out request? For example, who typically receives the opt-out request and how? If the opt-out request must be transferred to a third party, how is that transfer accomplished, and how long does such a transfer typically take? Once an opt-out request is received by the third party, what procedures are involved in effectuating the opt-out request, and how long do such procedures typically take?

f. Should there be time limits on the duration of opt-out requests? Why or why not? Does the CAN–SPAM Act give the Commission authority to limit the time opt-out requests remain in effect? If so, how?

g. Is an e-mail marketer's suppression list likely to have far fewer entries than the 84 million numbers on the National Do Not Call Registry? How many recipients receive an e-mail marketer's messages in a typical e-mail marketing campaign? How many of those recipients submit opt-out requests?

5. Section 316.5—Receipt of Requests Not To Receive Future Commercial E-mail Messages From a Sender

a. What are the costs to senders and benefits to recipients of proposed 316.5?

b. Does the Commission's proposal regulating how recipients submit opt-out requests accomplish the goal of removing all extraneous encumbrances that could interfere with a recipient's ability to submit an opt-out request? Do any e-mail senders deprive recipients of any benefit when they submit an opt-out request? Should depriving recipients of a benefit when they opt out be added to the list of encumbrances prohibited by this proposal?

c. Should the Commission's proposal regulating how recipients submit opt-out requests be changed in any way?

6. Aggravated Violations Relating to Commercial E-mail

a. What data are available that would demonstrate that the *manual* harvesting of e-mail addresses is contributing substantially to the proliferation of commercial e-mail messages that are prohibited under section 7704(a) of the Act? Are there legitimate uses of manual harvesting that should be preserved?

b. What evidence is there that the sellers of open proxy lists also engage in sending e-mail messages that are prohibited under section 7704(a) of the Act? Are there any legitimate purposes for selling or distributing for consideration open proxy lists? Are there any circumstances in which an open proxy would be used by a third party with permission of the proxy's operator?

c. Are there practices that contribute substantially to the proliferation of unlawful commercial e-mail messages and are not already prohibited by the Act? For example, is harvesting e-mail addresses from peer-to-peer networks already prohibited by the Act? Is that practice contributing substantially to the proliferation of unlawful commercial e-mail messages? Is harvesting e-mail addresses from newsgroups and other similar online forums already prohibited by the Act? Is that practice contributing substantially to the proliferation of unlawful commercial e-mail messages?

7. Renumbering Provisions of the Sexually Explicit Labeling Rule and Integration of Those Provisions Into The Proposed CAN–SPAM Rule

a. Is the Commission's proposal to renumber and integrate into the Proposed CAN–SPAM Rule the provisions of the previously-adopted Sexually Explicit Labeling Rule a good solution? If not, why not? What other approach would be better? Why?

VIII. Proposed Rule

List of Subjects in 16 CFR Part 316

Advertising, Computer technology, Electronic mail, Internet, Trade practices.

Accordingly, for the reasons set forth in the preamble, the Commission proposes to amend title 16, chapter 1.

subchapter C of the Code of Federal Regulations as follows:

1. Revise part 316 to read as follows:

PART 316—CAN–SPAM RULE

Sec.

Authority: 15 U.S.C. 7701–7713.

§ 316.1 Scope.

This part implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN–SPAM Act"), 15 U.S.C. 7701–7713.

§ 316.2 Definitions.

(a) The definition of the term "affirmative consent" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(1).

(b) "Character" means an element of the American Standard Code for Information Interchange ("ASCII") character set.

(c) The definition of the term "commercial electronic mail message" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(2).

(d) The definition of the term "electronic mail address" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(5).

(e) The definition of the term "electronic mail message" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(6).

(f) The definition of the term "initiate" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(9).

(g) The definition of the term "Internet" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(10).

(h) "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(i) The definition of the term "procure" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(12).

(j) The definition of the term "protected computer" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(13).

(k) The definition of the term "recipient" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(14).

(l) The definition of the term "routine conveyance" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(15).

(m) The definition of the term "sender" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(16), *provided that,* when more than one person's products or services are advertised or promoted in a single electronic mail message, each such person who is within the Act's definition will be deemed to be a "sender," *except that,* if only one such person both is within the Act's definition and meets one or more of the criteria set forth below, only that person will be deemed to be the "sender" of that message:

(1) The person controls the content of such message;

(2) The person determines the electronic mail addresses to which such message is sent; or

(3) The person is identified in the "from" line as the sender of the message.

(n) The definition of the term "sexually oriented material" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7704(d)(4).

(o) The definition of the term "transactional or relationship messages" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(17).

(p) "Valid physical postal address" means the sender's current street address, a Post Office box the sender has registered with the United States Postal Service, or a private mailbox the sender has registered with a commercial mail receiving agency that is established pursuant to United States Postal Service regulations.

§ 316.3 Primary purpose.

(a) In applying the term "commercial electronic mail message" defined in the CAN–SPAM Act, 15 U.S.C. 7702(2), the "primary purpose" of an electronic mail message shall be deemed to be commercial based on the criteria in paragraphs (a)(1) through (3) and (b) of this section:[1]

(1) If an electronic mail message consists exclusively of the commercial advertisement or promotion of a commercial product or service, then the "primary purpose" of the message shall be deemed to be commercial.

(2) If an electronic mail message contains both the commercial advertisement or promotion of a commercial product or service as well as transactional or relationship content as set forth in paragraph (c) of this section, then the "primary purpose" of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or

(ii) The electronic mail message's transactional or relationship content as set forth in paragraph (c) of this section does *not* appear, in whole or in substantial part, at the beginning of the body of the message.

(3) If an electronic mail message contains both the commercial advertisement or promotion of a commercial product or service as well as other content that is not transactional or relationship content as set forth in paragraph (c) of this section, then the "primary purpose" of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or

(ii) A recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is the commercial advertisement or promotion of a commercial product or service. Factors illustrative of those relevant to this interpretation include the placement of content that is the commercial advertisement or promotion of a commercial product or service, in whole or in substantial part, at the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.

(b) In applying the term "transactional or relationship message" defined in the CAN–SPAM Act, 15 U.S.C. 7702(17), the "primary purpose" of an electronic mail message shall be deemed to be transactional or relationship if the electronic mail message consists exclusively of transactional or relationship content as set forth in paragraph (c) of this section.

(c) Transactional or relationship content of e-mail messages under the CAN–SPAM Act is content:

(1) To facilitate, complete, or confirm a commercial transaction that the

[1] The Commission does not intend for these criteria to treat as a "commercial electronic mail message" anything that is not commercial speech.

recipient has previously agreed to enter into with the sender;

(2) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(3) With respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender, to provide —

(i) Notification concerning a change in the terms or features;

(ii) Notification of a change in the recipient's standing or status; or

(iii)At regular periodic intervals, account balance information or other type of account statement;

(4) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(5) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

§ 316.4 Prohibition against failure to honor an opt-out request within three business days of receipt.

(a) If a recipient makes a request using a mechanism provided pursuant to 15 U.S.C. 7704(a)(3) not to receive some or any commercial electronic mail messages from a sender, and does not subsequently provide affirmative consent to receive commercial electronic mail messages from such sender, then it is a violation of 15 U.S.C. 7704(a)(4):

(1) For the sender to initiate the transmission to the recipient, more than three business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(2) For any person acting on behalf of the sender to initiate the transmission to the recipient, more than three business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(3) For any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (a) or (b); or

(4) For the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

(b) In any proceeding or action pursuant to the CAN–SPAM Act or the CAN–SPAM Rule to enforce compliance, through an order to cease and desist or an injunction, with subsection (a), neither the Commission nor the Federal Communications Commission nor the attorney general, official, or agency of a State shall be required to allege or prove the state of mind required by subsection (a).

§ 316.5 Prohibition on charging a fee or imposing other requirements on recipients who wish to opt out.

Neither a sender nor any person acting on behalf of a sender may require that any recipient pay any fee, provide any information other than the recipient's electronic mail address and opt-out preferences, or take any other steps except sending a reply electronic mail message or visiting a single Internet Web page, in order to:

(a) Use a return electronic mail address or other Internet-based mechanism, required by 15 U.S.C. 7704(a)(3), to submit a request not to receive future commercial electronic mail messages from a sender; or

(b) Have such a request honored as required by 15 U.S.C. 7704(a)(3)(B) and (a)(4).

§ 316.6 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Exclude sexually oriented materials from the subject heading for the electronic mail message and include in the subject heading the phrase "SEXUALLY-EXPLICIT:" in capital letters as the first nineteen (19) characters at the beginning of the subject line; [2]

(2) Provide that the content of the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

(i) The phrase "SEXUALLY-EXPLICIT:" in a clear and conspicuous manner; [3]

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the e-mail message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

§ 316.7 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission, Commissioner Leibowitz not participating.

Donald S. Clark,

Secretary.

Note: Appendix A is published for informational purposes only and will not be codified in Title 16 of the Code of Federal Regulations.

[2] The phrase "SEXUALLY-EXPLICIT" comprises 17 characters, including the dash between the two words. The colon (:) and the space following the phrase are the 18th and 19th characters.

[3] This phrase consists of nineteen (19) characters and is identical to the phrase required in 316.5(a)(1) of this Rule.

APPENDIX A—LIST OF COMMENTERS CITED IN NPRM AND ACRONYMS ASSIGNED TO COMMENTERS

Acronym	Commenter
AAOMS	American Association of Oral and Maxillofacial Surgeons
AAR	American Air Racing
ABA	American Bar Association
ABM	American Business Media
ACA	ACA International
ACB	America's Community Bankers
ACLI	American Council of Life Insurers
AeA	American Electronics Association
AOC	The Electronic Warfare and Information Operations Association
ASA	American Staffing Association
ASAE	American Society of Association Executives
Aspects	Aspects of Design
ASTA	American Society of Travel Agents, Inc.
AT&T	AT&T Corp.
AWWA	American Water Works Association
Bahr	Law Offices of Susan Bar
Bank	Bank of America Corp.
Bankers	American Bankers Association
BMI	Broadcast Music, Inc.
BMO	BMO Financial Group
Calvert	Thomas Calvert
CBA	Consumer Bankers Association
Cendant	Cendant Corp.
Chamber	United States Chamber of Commerce
ClickZ	ClickZ Network
CMOR	Council on Marketing and Opinion Research
Coalition	National Business Coalition on E-Commerce and Privacy
Comerica	Comerica
Consumer	Consumer World
Countrywide	Countrywide Financial Corp.
Csorba	Frank Csorba
Danko	Danko
Discover	Discover Bank
DMA	Direct Marketing Association, Inc.
DoubleClick	DoubleClick, Inc.
DSA	Direct Selling Association
EDC	EDC Computers, Inc.
Edgley	John Edgley
EFF	Electronic Frontier Foundation
ERA	Electronic Retailing Association
ESPC	E-mail Service Provider Coalition
Experian	Experian Marketing Solutions
Ford	Ford
Ford Motor	Ford Motor Company
Fredrikson	Fredrikson & Byron, PA
Freese	Bill Freese
Giambra	Giambra
Gilbert	Doug Gilbert
Go Daddy	Go Daddy Software, Inc.
Harte	Harte-Hanks, Inc.
IAAMC	International Association of Association Management Companies
IAC	InterActive Corp.
IBAT	Independent Bankers Association of Texas
ICC	Internet Commerce Coalition
ICFA	International Cemetery and Funeral Association
IFA	International Franchise Association
ICOP	International Council of Online Professionals
Independent	Independent Sector
Innovation	Innovation Press
IPPC	International Pharmaceutical Privacy Consortium
Jaffe	Andrew Jaffe
Jensen	Roy Jensen
Justasmallthing.com	Justasmallthing.com
KALRES	KALRES, Inc.
Keef	Carl Keef
Keogh	Jill Keogh
KeyCorp	KeyCorp
Krueger, B.	Brandt Krueger
Krueger, K.	Karl Krueger
KSUF	Kansas State University Foundation
Lenox	Lenox, Inc.
Lunde	Brian Lunde

APPENDIX A—LIST OF COMMENTERS CITED IN NPRM AND ACRONYMS ASSIGNED TO COMMENTERS—Continued

Acronym	Commenter
M&F	Morrison & Foerster LLP
Maat	Ayo Maat
Marzuola	Steven Marzuola
MasterCard	MasterCard International Inc.
MBA	Mortgage Bankers Association
MBNA	MBNA America Bank, N.A.
Mead	Bennett Mead
Mellon	Mellon Financial Corp.
Microsoft	Microsoft Corp.
Midway	Midway Publishing Inc.
MIS	Marketing Idea Shop
MMS	MMS, Inc.
Moerlien	Charles Moerlien
MPA	Magazine Publishers of America
MPAA	Motion Picture Association of America
NAA	Newspaper Association of America
NADA	National Automobile Dealers Association
NAIFA	National Association of Insurance and Financial Advisors
NAR	National Association of Realtors
NCL	National Consumers League
NEPA	Newsletter and Electronic Publishers Association
NetCoalition	NetCoalition
NFCU	Navy Federal Credit Unition
NNA	National Newspaper Association
NRF	National Retail Federation
O'Connor	Clint O'Connor
Oldaker	Oldaker, Biden & Belair
OPA	Online Publishers Association
P&G	Proctor & Gamble
Piper	Piper Rudnick LLP
Potocki	Potocki
PMA	Promotion Marketing Association
RDS	RDS
Reed	Reed Elsevier, Inc.
Register	Register.com, BulkRegister, eNom, Network Solutions, Tucows
Richardson	David Richardson
RMAS	Russell-Mellon Analytical Services
Rospenda	John Rospenda
RTCM	Radio Technical Commission for Maritime Services
Sachau	Barb Sachau
Safell	Jean Safell
Satchell	Stephen Satchell
SBA	Office of Advocacy, U.S. Small Business Association
Shaw	Tom Shaw
SIA	Securities Industry Association
SIIA	Software and Information Industry Association
Speer	Speer
St. Saveur	Joe St. Saveur
SVM	SVM Corporate Marketing
Time Warner	Time Warner
True	THISISTRUE.com
Truth	Dawning Truth
UNC	UNC General Alumni Association
United	United Online
USTOA	United States Tour Operators Association
ValueClick	ValueClick, Inc.
Vandenberg	Michael Vandenberg
Venable	Venable LLP
Visa	Visa USA, Inc.
Vowles	James Vowles
Wells Fargo	Wells Fargo & Company
Weston	Weston, Garrou & DeWitt

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Pistachios grown in—
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AGRICULTURE DEPARTMENT

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- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

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ENERGY DEPARTMENT

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ENERGY DEPARTMENT

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- Georgia; comments due by 5-20-05; published 4-20-05 [FR 05-07936]
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  - National priorities list update; comments due by 5-18-05; published 4-18-05 [FR 05-07573]
  - National priorities list update; comments due by 5-18-05; published 4-18-05 [FR 05-07572]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

The text of laws is not published in the **Federal**

Register but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.J. Res. 19/P.L. 109–11

Providing for the appointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2005; 119 Stat. 229)

H.J. Res. 20/P.L. 109–12

Providing for the appointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2005; 119 Stat. 230)

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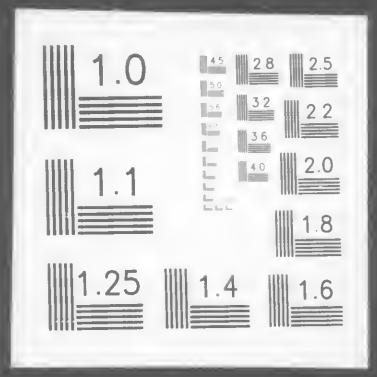
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