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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, July 19, 2005
9:00 a.m.-Noon

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

RESERVATIONS: (202) 741-6008

Contents

Federal Register

Vol. 70, No. 101

Thursday, May 26, 2005

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
Proposed Rules:
724.....30380

7 CFR
301.....30329
Proposed Rules:
249.....30558

9 CFR
417.....30331

10 CFR
170.....30526
171.....30526

26 CFR
1.....30334
602.....30334
Proposed Rules:
1.....30380

33 CFR
165 (2 documents) 30358, 30360

36 CFR
Proposed Rules:
1195.....30381

37 CFR
1.....30360
201.....30366

40 CFR
51.....30592
52 (8 documents) 30367, 30370, 30373, 30376, 30377, 30378
Proposed Rules:
52 (6 documents) 30382, 30389, 30396, 30405, 30406, 30407
63.....30407

49 CFR
Subtitle A 30378
224.....30378

Rules and Regulations

Federal Register
Vol. 70, No. 101
Thursday, May 26, 2005

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–027–1]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding counties in Illinois, Indiana, New York, Ohio, Pennsylvania and Wisconsin. In addition, we are designating the States of New Hampshire and Vermont, in their entirety, as quarantined areas based on their decision to no longer enforce intrastrate movement restrictions. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: This interim rule is effective May 26, 2005. We will consider all comments that we receive on or before July 25, 2005.

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

- *EDOCKET:* Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 05–027–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–027–1.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During "shoot feeding," young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.,) larch (*Larix* spp.,) and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors have revealed that 20 counties in Illinois, Indiana, New York, Ohio, Pennsylvania, and Wisconsin are infested with PSB. Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present. or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles and (2) the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are designating Christian, Douglas, and Edgar Counties, IL; Vigo County, IN; Clinton, Essex, Rensselaer, Warren, and Washington Counties, NY; Lawrence and Meigs Counties, OH; Snyder, Sullivan, Union, and Wayne Counties, PA; and Dane, Jackson, Lafayette, Sauk, and Walworth Counties, WI, as quarantined areas, and we are adding them to the list of quarantined areas in § 301.50–3(c).

As noted previously, the regulations provide that, for less than an entire State to be designated as a quarantined area, the State must have adopted and be enforcing a quarantine and regulations that impose restrictions on the intrastate

movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles. The States of New Hampshire and Vermont have contained, respectively, one and four counties designated as quarantined areas in the regulations. However, those two States have notified APHIS that they no longer wish to enforce a quarantine and regulations on the intrastate movement of regulated articles within their borders. Therefore, we are also amending § 301.50–3(c) to designate the States of New Hampshire and Vermont, in their entirety, as quarantined areas.

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of this interim rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c), the entries for New Hampshire and Vermont are revised and the entries for Illinois, Indiana, New York, Ohio, Pennsylvania, and Wisconsin are amended by adding new counties in alphabetical order to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

* * * * *

Christian County. The entire county.

* * * * *

Douglas County. The entire county.

* * * * *

Edgar County. The entire county.

* * * * *

Indiana

* * * * *

Vigo County. The entire county.

* * * * *

New Hampshire

The entire State.

New York

* * * * *

Clinton County. The entire county.

* * * * *

Essex County. The entire county.

* * * * *

Rensselaer County. The entire county.

* * * * *

Warren County. The entire county.

Washington County. The entire county.

* * * * *

Ohio

* * * * *

Lawrence County. The entire county.

* * * * *

Meigs County. The entire county.

* * * * *

Pennsylvania

* * * * *

Snyder County. The entire county.

* * * * *

Sullivan County. The entire county.

* * * * *

Union County. The entire county.

* * * * *

Wayne County. The entire county.

* * * * *

Vermont

The entire State.

* * * * *

Wisconsin

Dane County. The entire county.

* * * * *

Jackson County. The entire county.

* * * * *

Lafayette County. The entire county.

* * * * *

Sauk County. The entire county.

Walworth County. The entire county.

Done in Washington, DC, this 20th day of May 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–10551 Filed 5–25–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 04–042N]

HACCP Plan Reassessment for Mechanically Tenderized Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this notice to inform establishments that produce mechanically tenderized beef products that their next annual HACCP plan reassessment for these products must take into account the fact that there have been three relatively recent *Escherichia coli* (*E. coli*) O157:H7 outbreaks associated with consumption of mechanically tenderized beef. This requirement applies to HACCP plan reassessments for raw and cooked mechanically tenderized beef products, including such products that are injected with marinade (or "enhanced" products). One outbreak that was associated with consumption of mechanically tenderized beef occurred in August 2000, one in June 2003, and one in August 2004.

The occurrence of these outbreaks represents a change that would affect the hazard analysis and could alter the HACCP plans of establishments that produce mechanically tenderized beef products. Therefore, establishments that produce such products should consider the significance of the outbreaks and ensure that their HACCP plans adequately address relevant biological hazards, particularly *E. coli* O157:H7. If an establishment that produces mechanically tenderized beef products has already considered the significance of the three outbreaks as part of a HACCP plan reassessment, it need not repeat this effort. An establishment that has already conducted its 2005 reassessment for mechanically tenderized beef products and has not yet considered the significance of the three outbreaks as part of a HACCP plan reassessment should do so as part of its 2006 annual HACCP plan reassessment. FSIS invites comments on this notice.

DATES: The Agency must receive comments by July 25, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 04–042N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp*.

FOR FURTHER INFORMATION CONTACT: Lynn Dickey, Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 405, Cotton Annex, Washington, DC 20250–3700, (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) to protect the health and welfare of consumers by preventing the distribution in commerce of meat products that are adulterated or misbranded. In pursuit of its goal of reducing the risk of foodborne illness from meat products to the maximum extent possible, FSIS issued final regulations on July 25, 1996, that mandated the development and implementation of Pathogen Reduction and Hazard Analysis and Critical Control Point (HACCP) Systems by federally inspected establishments (61 FR 38806). These regulations require that federally inspected establishments take preventive and corrective measures at each stage of the food production process where food safety hazards occur. The HACCP regulations (9 CFR 417.2(a)) require establishments to conduct a hazard analysis to determine what food safety hazards are reasonably likely to occur in the production process of particular products and to identify the preventive measures that the establishment can apply to control those hazards.

Section 417.2(a)(1) of the HACCP regulations states that a food safety hazard that is reasonably likely to occur is one for which a prudent establishment would establish control measures because the hazard historically has occurred, or because there is a reasonable possibility that it will occur in the particular type of product being processed, in the absence of those controls. Whenever a hazard analysis reveals that one or more hazards are reasonably likely to occur in the production process, the regulations require that the establishment develop and implement a written HACCP plan that includes specific control measures for each hazard identified (9 CFR 417.2(b)(1) and (c)).

Section 417.4(a)(3) of the regulations requires that every establishment reassess the adequacy of its HACCP plan at least annually and whenever any changes occur that could affect the hazard analysis or alter the HACCP plan. Because the outbreaks discussed in this notice are the first known outbreaks associated with consumption of mechanically tenderized beef products, and because there have been three outbreaks, the occurrence of these *E. coli* O157:H7 outbreaks is a change that could affect the hazard analysis or alter the HACCP plans for such products.

FSIS' Actions To Address E. coli O157:H7

In 1994, FSIS notified the public that raw ground beef products contaminated with *E. coli* O157:H7 are adulterated within the meaning of the FMIA (21 U.S.C. 601(m)(1)) unless the ground beef is further processed to destroy this pathogen. The public health risk presented by beef products contaminated with *E. coli* O157:H7 is not limited, however, to raw ground beef products. In the January 19, 1999, **Federal Register**, FSIS explained that if non-intact beef products, including beef that has been mechanically tenderized by needling or cubing, are found to be contaminated with *E. coli* O157:H7, they must be processed into ready-to-eat product, or they would be deemed to be adulterated (64 FR 2803).

In the October 7, 2002, **Federal Register**, FSIS informed manufacturers of raw beef products, including manufacturers of mechanically tenderized raw beef products, that they were required to reassess their HACCP plans, in light of certain scientific data on *E. coli* O157:H7, to determine whether *E. coli* O157:H7 contamination was a hazard reasonably likely to occur in their production process (67 FR 62325). The data discussed in that **Federal Register** provided evidence that *E. coli* O157:H7 was more prevalent than was thought before the data became available, and that this pathogen may be a hazard reasonably likely to

occur at all stages of handling raw beef products (67 FR 62328).

Although FSIS previously informed establishments producing mechanically tenderized raw beef products that they were required to reassess their HACCP plans based on the availability of specific scientific data related to the prevalence of *E. coli* O157:H7, only one outbreak (the 2000 outbreak discussed below) associated with such product had occurred at the time these establishments conducted their HACCP plan reassessments. In addition, FSIS has not previously required establishments that produce cooked mechanically tenderized beef products to reassess their HACCP plans to ensure that these HACCP plans adequately address biological hazards, particularly *E. coli* O157:H7.

E. coli O157:H7 Outbreaks Associated With Mechanically Tenderized Beef

In August 2004, the Colorado Department of Public Health and Environment (CDPHE) confirmed by culture tests four *E. coli* O157:H7 cases with matching Pulse-Field Gel Electrophoresis (PFGE) patterns in the Denver, Colorado, metropolitan area. The CDPHE determined that the individuals who became ill in this outbreak ate a tenderized, marinated beef steak product at four separate locations of a national restaurant chain. The CDPHE conducted an age and sex-matched case-control study that showed that consumption of this particular steak product was the only commonality of those who became ill. Although the CDPHE did not test product for *E. coli* O157:H7, the case-control study provided strong evidence that consumption of this product was associated with the outbreak. The producing establishment voluntarily recalled approximately 406,000 pounds of product. Information on this recall can be found on the FSIS web page (*http://www.fsis.usda.gov*), through the "FSIS Recalls" link, under recall case number 033–2004.

In June 2003, State health departments confirmed by culture tests eleven *E. coli* O157:H7 cases in five States: Seven cases in Minnesota, one case in Michigan, one case in Kansas, one case in Iowa, and one case in North Dakota. The cases were a two-enzyme PFGE pattern match. Based on the food intake histories of the persons who became ill, the State health departments epidemiologically linked all cases to a tenderized beef steak product (a boneless beef filet bacon-wrapped steak product injected with marinade). The Michigan Department of Agriculture Laboratory analyzed one sample of product associated with the outbreak and found it positive for *E. coli* O157:H7. The Minnesota Departments of Agriculture and Health Laboratories analyzed five samples of the product associated with the outbreak and found them positive for *E. coli* O157:H7. The product samples analyzed matched the two-enzyme PFGE pattern of the outbreak cases. The food histories of the persons who became ill, and the fact that the PFGE patterns in the product samples analyzed matched the outbreak cases, provided strong evidence that consumption of the tenderized steak product was associated with the outbreak.

At the time of the outbreak, the establishment that produced the tenderized beef steak product was thoroughly breaking down, cleaning, and sanitizing its injectors only once per week. The establishment subsequently documented a revised plan in its Sanitation Standard Operating Procedures (SOPs) to break down, clean, and sanitize its injection needles, tenderizing needles, and associated processing equipment on a daily basis. Also, after changing its Sanitation SOPs, the establishment incorporated in its production process an antimicrobial treatment of the product prior to the tenderizing and marinating process.

The establishment that had produced the product linked to the 2003 outbreak voluntarily recalled approximately 739,000 pounds of product. Information on this recall can be found on the FSIS web page (*http://www.fsis.usda.gov*), through the "FSIS Recalls" link, under recall case number 028–2003.

From information obtained from the Centers for Disease Control and Prevention and State health departments, FSIS identified another outbreak that was associated with the consumption of mechanically tenderized steaks. In August 2000, the Michigan Department of Community Health (MDCH) laboratory identified two human isolates of a distinct strain of *E. coli* O157:H7 with matching PFGE patterns. This strain had not been previously found in Michigan.

Local health departments obtained case histories from both of the persons who had become ill. The only similar possible exposure to the pathogen for the two individuals was a steak meal consumed by each on August 12, 2000, at different locations of a local restaurant steakhouse chain. Each individual had eaten a sirloin steak cooked to order with a red or pink center. The sirloin steaks were needle tenderized. The investigation of this matter suggested that the sirloin steak eaten by each person was likely the common source of the distinct strain of *E. coli* O157:H7 associated with these individuals' illnesses. The fact that both of the ill persons consumed an identical restaurant meal on the same day and had the onset of symptoms on the same date indicated that consumption of the tenderized beef steak product was associated with the illnesses. As a result of this investigation, the supplier of the steaks agreed to procedural changes in its operations, including sanitizing the needle-piercing machine used and testing its beef for *E. coli* O157:H7.

Reassessment in Response to Outbreaks

The *E. coli* O157:H7 outbreaks discussed above that were associated with consumption of mechanically tenderized beef products are events that could alter the hazard analysis, and ultimately the HACCP plan, of any establishment that produces mechanically tenderized beef products. Therefore, as part of their next annual HACCP plan reassessment for such products, establishments that produce raw or cooked mechanically tenderized beef products (with or without marinade), hereafter referred to as mechanically tenderized beef products, must take into account the *E. coli* O157:H7 outbreaks discussed above to determine whether their HACCP plans for these products adequately address biological hazards, particularly *E. coli* O157:H7. Establishments that produce mechanically tenderized beef products that have already taken these three outbreaks into account in a HACCP plan reassessment for these products are not required to consider these outbreaks in their next annual HACCP plan reassessment, provided the establishments have evidence of their reassessment in their hazard analysis or HACCP plans, or a record of reassessment, and make this evidence available to FSIS inspection program personnel.

When conducting a reassessment that takes these outbreaks into account to determine whether HACCP plans for mechanically tenderized beef products adequately address biological hazards, *E. coli* O157:H7 in particular, establishments may need to evaluate the adequacy of any *E. coli* O157:H7 interventions applied to the products' source materials. If they have not already done so, establishments producing mechanically tenderized beef products may wish to consider implementing purchase specifications that require that incoming product has been treated to eliminate or reduce *E. coli* O157:H7 to an undetectable level. If establishments producing mechanically tenderized beef products require their

suppliers to meet such purchase specifications, they should also ensure that their suppliers actually meet these purchase specifications. Establishments could incorporate such purchase specifications in their HACCP plans, in their Sanitation SOPs, which FSIS has recognized as prerequisites for HACCP, or in other prerequisite programs.

Establishments producing mechanically tenderized beef products might also consider applying an allowed antimicrobial agent to the surface of the product prior to processing or tenderization. FSIS has made available on its web site a document entitled, "Guidance on Ingredients and Sources of Radiation Used to Reduce Microorganisms on Carcasses, Ground Beef, and Beef Trimmings." This document provides guidance on the use of antimicrobials on beef products. A link to the document is found with the October 7, 2002, **Federal Register** notice entitled, "*E. coli* O157:H7 Contamination of Beef Products," on the "Interim and Final Rules" page of FSIS' web site *http://www.fsis.usda.gov/Regulations_&_Policies/2002_Interim_&_Final_Rules_Index/index.asp*.

When conducting their reassessment, establishments producing mechanically tenderized beef products should consider the number of times tenderizers pass through the product. In addition, they should evaluate the adequacy of their sanitation procedures for mechanical tenderizers, including needles, and for associated processing equipment, including reservoirs and piping associated with the tenderizing and enhancing operations. Because tenderizers pass through the product, they may introduce biological hazards, including *E. coli* O157:H7, into the interior of the product. Therefore, sanitation procedures are particularly important in the production of mechanically tenderized beef products. Thus, Sanitation SOPs, other prerequisite programs, or HACCP plans should address procedures that ensure that all mechanical tenderizers and associated processing equipment are cleaned on a regular basis to minimize the potential for translocating *E. coli* O157:H7 from the exterior surface of the product to the interior and to minimize the potential for cross contamination within and among lots of production.

Establishments producing raw, mechanically tenderized beef products might also consider including cooking instructions, in addition to required safe handling instructions (*e.g.*, cook to at least 140 degrees F), on packages of raw, mechanically tenderized beef products, or other labeling, to ensure that these products are cooked adequately to destroy *E. coli* O157:H7, should it be present. Such cooking instructions, or other labeling, however, cannot serve as a control or critical control point (CCP) to address *E. coli* O157:H7 in the production process of raw, mechanically tenderized beef products.

FSIS itself is considering requiring that raw, mechanically tenderized products be labeled to indicate that they have undergone mechanical tenderization, that the product is non-intact, and that it should be cooked to an adequate internal temperature to destroy any pathogens that may have been translocated from the surface of the product to the interior. Although the Federal meat and poultry products inspection regulations require that any marinade injected in a product be listed as an ingredient on the product's label, they do not require that product be labeled to indicate that it has been mechanically tenderized, and it is not possible to discern visually whether product has been mechanically tenderized.

Finally, establishments producing cooked mechanically tenderized beef products may need to consider whether their cooking procedures are adequate to destroy *E. coli* O157:H7, should it be present. Information on a study concerning the effects of cooking on *E. coli* O157:H7 in blade tenderized steaks is included in the following section of this document.

This section also includes information on published studies concerning bacteria other than *E. coli* O157:H7 in the interior of mechanically tenderized beef. In addition, it provides information on guidelines developed by industry associations regarding pathogen control in mechanically tenderized and enhanced beef products.

Research and Guidance on the Production of Mechanically Tenderized Beef Products

FSIS asked the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) to answer several questions with regard to *E. coli* O157:H7 in mechanically tenderized beef. NACMCF met on August 3, 2001, and January 23, 2002, to discuss these questions. A report on NACMCF's responses to FSIS" questions is available on the Internet at *http://www.fsis.usda.gov/OPHS/NACMCF/2002/rep_blade1.htm*. The report is entitled, "*Escherichia coli* O157:H7 in Blade-tenderized, Non-intact Beef" (updated September 9, 2002).

FSIS asked NACMCF whether non-intact, blade tenderized beef steaks present a greater risk to consumers from *E. coli* O157:H7 compared to intact beef steaks, if prepared similarly to intact beef steaks. Based on information from a Master's thesis (Sporing, 1999), NACMCF concluded that non-intact, blade tenderized beef steaks do not present a greater risk to consumers from *E. coli* O157:H7 than intact beef steaks if the blade tenderized beef steak is oven broiled and cooked to an internal temperature of 140 degrees F or above. However, NACMF concluded that blade tenderized beef steaks present a greater risk from *E. coli* O157:H7 than intact beef steaks, particularly to immuno-compromised individuals, when served very rare with cold spots (less than 120 degrees F internal temperature).

FSIS also asked NACMCF whether non-intact, blade tenderized beef roasts present a greater risk to consumers from *E. coli* O157:H7 compared to intact beef roasts, if prepared similarly to intact beef roasts. NACMCF concluded that there were insufficient data to answer this question adequately.

Finally, FSIS asked NACMCF whether available evidence supports the need for a labeling requirement to distinguish between intact and non-intact products in order to enhance public health protection. Again, NACMCF concluded that there were insufficient data to make a response to this question at the time the committee met. The NACMCF report lists research needs at the end of the document.

Participants at the 2004 Conference of Food Protection discussed the handling of blade tenderized steaks at retail facilities and restaurants. Participants discussed the fact that blade tenderized products typically are not labeled to indicate that the products have been tenderized. They considered data from the Master's thesis that NACMCF reviewed (Sporing, 1999). These data showed that 3 to 4 percent of the surface bacterial load of blade tenderized beef steaks is transferred to the interior of the product. According to the thesis, among three methods of preparation—oven cooking, commercial grilling, and skillet cooking—skillet cooking provided the least effective and most variable reduction in *E. coli* O157:H7.

Participants in the 2004 Conference for Food Protection recommended that the Food and Drug Administration (FDA) and USDA work together to develop guidance for retail facilities and restaurants on the safe cooking of blade tenderized steaks and other non-intact steaks. The participants recommended that this guidance be included in the Annex of the Food Code, and that FDA and USDA submit this guidance at the 2006 Conference for Food Protection.

FDA and USDA intend to prepare this guidance.

Several articles in peer-reviewed journals discuss studies on the penetration of bacteria other than *E. coli* O157:H7 into the interior of mechanically tenderized beef products. For example, one study concerning *salmonellae* inoculated in beef rounds found that mechanical tenderization increased the level of *salmonellae* in core samples by about 1 logarithm, that dripping inoculated rounds into a 50 parts per million (ppm) chlorine solution did not prevent the occurrence of *salmonellae* in core samples of mechanically tenderized units, and that *Salmonella* survived in the core and on the surface of some, but not all, inoculated rounds cooked to an internal temperature of 130 degrees F ("The Effect of Mechanical Tenderization on Beef Rounds Inoculated with *Salmonellae*," Johnson, R.W.; Harris, M.E., and Moran, A.B., *Journal of Food Safety*. 1978; 1(3): 201–209; 9 ref.).

In another study, samples of mechanically tenderized beef were subjected to enumeration of aerobes, coliforms, *E. coli*, and organisms that formed black or grey on Harlequin TM agar (a medium formulated for recovery of *Listeria*). The study concluded that cooking mechanically tenderized beef to a medium rare condition may be adequate for ensuring the microbiological safety of this product, provided it is devoid of excessive contamination of deep tissues ("Microbiological Conditions for Mechanically Tenderized Beef Cuts Prepared at Four Retail Stores," Gill, C.O.; McGinnis, J.C., *International Journal of Food Microbiology*. 2004; 95(1): 95–102).

Another study found that cleaning and sanitizing the tenderizer with an iodine-based sanitizer (25 ppm titratable iodine) decreased the bacterial levels of mechanically tenderized rounds ("Microbial Aspects of Mechanical Tenderization of Beef," Raccah, M.; Henrickson, R.L., *Journal of Food Protection*. 1979. 42(12): 971–973; 20 ref.).

Several industry associations (the American Meat Institute, the National Cattlemen's Beef Association, the National Meat Association, and the Southwest Meat Association) have developed guidelines to address pathogen control in mechanically tenderized beef products and enhanced beef products. These guidelines are currently available on the Internet, on the Beef Industry Food Safety Council Web site at *http://www.bifsco.org/BestPractices.aspx*. The guidelines present recommended practices throughout tenderizing or enhancing operations and during cleaning and sanitizing operations.

FSIS Actions To Enforce and Facilitate Compliance with the Reassessment Requirement

The Agency intends to instruct its inspection program personnel to determine whether establishments have considered the significance of the three outbreaks discussed in this notice as part of an annual HACCP plan reassessment for mechanically tenderized beef products. FSIS will also instruct inspection program personnel to ensure that all establishments producing mechanically tenderized beef products, including small and very small establishments that may not belong to a trade association, are aware that the Agency has issued this notice. Finally, FSIS intends to instruct its inspection program personnel to collect data concerning the outcomes of the required reassessment.

Paperwork Reduction Act

FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act and has determined that the paperwork requirements for the regulations that require establishments that produce mechanically tenderized beef products to reassess their HACCP Plans have already been accounted for in the Pathogen Reduction/HACCP Systems information collection approved by the Office of Management and Budget (OMB). The OMB approval number for the Pathogen Reduction/HACCP Systems information collection is 0583–0103.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: May 20, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–10471 Filed 5–25–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9207]

RIN 1545–AX93

Assumption of Partner Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the definition of liabilities under section 752 of the Internal Revenue Code (Code). These regulations provide rules regarding a partnership's assumption of certain fixed and contingent obligations in connection with the issuance of a partnership interest and provide conforming changes to certain regulations. These regulations also provide rules under section 358(h) for assumptions of liabilities by corporations from partners and partnerships. Finally, this document also contains temporary regulations relating to the assumption of certain liabilities under section 358(h). The text

of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective May 26, 2005.

Applicability Dates: The final § 1.752–6 regulations apply to assumptions of liabilities by a partnership occurring after October 18, 1999, and before June 24, 2003. All of the other final regulations in this Treasury Decision, as well as the temporary regulations under section 358, apply to liabilities assumed on or after June 24, 2003, except as otherwise noted.

FOR FURTHER INFORMATION CONTACT: Laura Fields at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1843. Responses to these collections of information are mandatory and are required to obtain a benefit. The collections of information in this final regulation is in § 1.752–7(e), (f), (g), and (h). This information is required for a former or current partner of a partnership to take deductions, losses, or capital expenses attributable to the satisfaction of the § 1.752–7 liability. This information will be used by the partner in order to take a deduction, loss, or capital expense. An additional collection of information in this final regulation is in § 1.752–7(k)(2). This information is required to inform the IRS of partnerships making the designated election and to report income appropriately. The collection of information is required to obtain a benefit, *i.e.*, to elect to apply the provisions of § 1.752–7 of the regulations in lieu of § 1.752–6. The likely respondents are business or other for-profit institutions and small businesses or organizations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Estimated total annual reporting burden: 125 hours.

The estimated annual burden per respondent varies from 20 to 40 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

Estimated number of respondents: 250.

Estimated annual frequency of responses: On occasion.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under sections 358, 704, 705, 737 and 752 of the Internal Revenue Code (Code).

As part of the Community Renewal Tax Relief Act of 2000 (the Act)(114 Stat. 2763), Congress enacted, on December 15, 2000, section 358(h), effective October 18, 1999, to address certain situations in which property is transferred to a corporation in exchange for both stock and the corporation's assumption of certain obligations of the transferor. In these situations, transferors took the position that the obligations were not liabilities within the meaning of section 357(c) or that they were described in section 357(c)(3), and, therefore, the obligations did not reduce the basis of the transferor's stock. These assumed obligations, however, did reduce the value of the stock. The transferors then sold the stock and claimed a loss. In this way, taxpayers attempted to duplicate a loss in corporate stock and to accelerate deductions that typically are allowed only on the economic performance of these types of obligations.

Section 358(h) addresses these transactions by requiring that, after the application of section 358(d), the basis in stock received in an exchange to which section 351, 354, 355, 356, or 361 applies be reduced (but not below the fair market value of the stock) by the amount of any liability assumed in the exchange. Exceptions to section 358(h) are provided where: (1) The trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange; or (2) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange. The Secretary, however, has the authority to limit these exceptions. The term *liability* for purposes of section 358(h) includes any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Code.

Congress recognized that taxpayers were attempting to use partnerships and S corporations to carry out the same types of abuses that section 358(h) was designed to deter. Therefore, in sections 309(c) and (d)(2) of the Act, Congress directed the Secretary to prescribe rules to provide "appropriate adjustments under subchapter K of chapter 1 of the Code to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) * * * in transactions involving partnerships." Under the statute, these rules are to "apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules."

In response to this directive, a notice of proposed rulemaking (REG–106736–00; 2003–28 I.R.B. 46) under sections 358, 704, 705, and 752 was published in the **Federal Register** (68 FR 37434) on June 24, 2003. In addition, temporary regulations (TD 9062) were published on that same day (68 FR 37414). The proposed and temporary regulations provide rules to prevent the duplication and acceleration of loss through the assumption by a partnership of certain liabilities from a partner. Section 1.752–6T of the temporary regulations (the temporary regulations) applies to liabilities assumed by a partnership after October 18, 1999, and before June 24, 2003. Section 1.752–7 of the proposed regulations (the proposed regulations) applies to liabilities assumed by a partnership on or after June 24, 2003. However, taxpayers may elect to apply the proposed regulations, instead of the temporary regulations, to liabilities assumed by a partnership after October 18, 1999, and before June 24, 2003.

The temporary regulations adopt the approach of section 358(h), with some modifications. For example, the exception for contributions of "substantially all of the assets with which the liability is associated" does not apply to certain abusive transactions described in Notice 2000–44, released to the public on August 11, 2000, and published on September 5, 2000 (2000–2 C.B. 255).

The proposed regulations deviate somewhat from the rules of section 358(h). In particular, the proposed regulations do not reduce the partner's basis in the partnership at the time of the assumption of a § 1.752–7 liability by the partnership, but delay that reduction until an event occurs that separates the partner from the liability (triggering event). The triggering events are: (1) A disposition (or partial disposition) of the partnership interest by the partner; (2) a liquidation of the partner's interest in the partnership; and (3) the assumption of the liability by another partner. After a triggering event, the partnership's (or the assuming partner's) deduction on the economic performance of the § 1.752–7 liability is limited. However, if the partnership (or the assuming partner) notifies the partner of the economic performance of the § 1.752–7 liability, then the partner may take a loss or deduction in the amount of the prior basis reduction.

The proposed regulations include an exception, similar to the exception in section 358(h)(2)(A), for transactions in which the partner contributes to the partnership the trade or business with which the liability is associated as part of the exchange (the trade or business exception), but do not include an exception, similar to the exception in section 358(h)(2)(B), for transactions in which the partner contributes to the partnership substantially all of the assets associated with the liability as part of the exchange. The proposed regulations also include an additional exception for situations in which, immediately before the triggering event, the amount of the remaining built-in loss with respect to all § 1.752–7 liabilities assumed by the partnership (other than § 1.752–7 liabilities assumed by the partnership with an associated trade or business) in one or more § 1.752–7 liability transfers is less than the lesser of 10% of the gross value of partnership assets or $1,000,000 (the de minimis exception).

In addition, the proposed regulations provide detailed rules to address the treatment of the liability between the date of the assumption of that liability by the partnership and the date of a triggering event and to address tiered entity situations.

The proposed regulations distinguish between a § 1.752–1 liability, for which a basis reduction is required when the liability is assumed by the partnership from a partner, and a § 1.752–7 liability, for which a basis reduction is not required until the occurrence of a triggering event. Under the proposed regulations, an obligation is a § 1.752–1 liability to the extent the obligation creates or increases the basis of any of the obligor's assets (including cash), gives rise to an immediate deduction to the obligor, or gives rise to an expense that is not deductible in computing the obligor's taxable income and is not properly chargeable to capital. All remaining obligations are § 1.752–7 liabilities. Under the proposed regulations, § 1.752–7 liabilities are subject to the rules of section 704(c) and the regulations thereunder.

The American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (the Act), was enacted on October 22, 2004. Section 833(a) of the Act amended section 704(c) of the Code by adding section 704(c)(1)(C), effective for contributions of property to a partnership after October 22, 2004. Under new section 704(c)(1)(C), if "built-in loss" property is contributed to a partnership, the built-in loss shall be taken into account only in determining the items allocated to the contributing partner, and, except as provided in regulations, in determining the amount of items allocated to the other partners, the basis of the contributed property shall be treated as being equal to its fair market value at the time of contribution. For this purpose, a "built-in loss" is defined to mean the excess of the adjusted basis of the property in the hands of the contributing partner over its fair market value at the time of its contribution to the partnership.

Section 833(b) of the Act requires basis adjustments to be made following certain transfers of interests in partnerships for which no section 754 election is in effect. As amended by the Act, section 743(a) and (b) of the Code requires a partnership to reduce the basis of partnership property upon the transfer of an interest in the partnership by sale or exchange or upon the death of a partner, if, at the time of the relevant transfer, the partnership has a "substantial built-in loss." Section 743(d)(1) provides that, for purposes of section 743, a partnership has a substantial built-in loss with respect to a transfer of a partnership interest if the partnership's adjusted basis in the partnership's property exceeds by more than $250,000 the fair market value of such property. Exceptions are provided for electing investment partnerships and for securitization partnerships, as defined in the Act. See also sections 734(b) and (d), as amended by section 833(c) of the Act (requiring a basis adjustment to be made following a distribution from a partnership for which no section 754 election is in effect in the case of a "substantial basis reduction").

The IRS and the Treasury Department are aware of certain similarities between the treatment of § 1.752–7 liabilities in these regulations and the treatment of built-in losses under sections 704(c)(1)(C), 734, and 743 of the Code, as added by the Act. For example, it is possible to view the contribution of property with an adjusted tax basis equal to the fair market value of the property, determined without regard to any § 1.752–7 liabilities, as "built-in loss" property after the § 1.752–7 liability is taken into account in those cases where the § 1.752–7 liability is related to the contributed property. Although a partnership's assumption of a § 1.752–7 liability as part of the contribution of property to the partnership can be analogized to a property with an adjusted tax basis greater than fair market value, the purposes of section 704(c)(1)(C) and § 1.752–7 are different in certain respects. Section 704(c)(1)(C) and the other changes in section 833 of the Act are directed toward loss duplication whereas § 1.752–7 is directed at both loss duplication and loss acceleration. Therefore, to the extent of any built-in loss attributable to a § 1.752–7 liability, § 1.752–7 shall be applied without regard to the amendments made by the Act, unless future guidance provides to the contrary. Any such guidance would be prospective in application.

Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on October 14, 2003. Two commentators requested to speak at that hearing. After consideration of the comments, the proposed and temporary regulations are adopted as modified by this Treasury decision.

Explanation of Provisions

These final regulations generally follow the proposed and temporary regulations with the changes described below.

1. Comments on § 1.752–6T

Several commentators suggested that the issuance of § 1.752–6T exceeded the authority granted to the Secretary in section 309 of the Act. More specifically, some commentators suggested that § 1.752–6T results in the inappropriate denial of a bona fide loss, that § 1.752–6T was issued to bootstrap the IRS's litigating position regarding transactions described in Notice 2000–44 (2000–2 C.B. 255), and that section 309 of the Act only granted the Secretary the authority to prescribe rules to address situations in which a partnership liability is assumed by a corporation. In addition, several

commentators argued that the Treasury Department and the IRS exceeded their authority in providing that § 1.752–6T applies retroactively to assumptions of liabilities occurring after October 18, 1999, and before June 24, 2003, the date the regulations were issued.

The Treasury Department and the IRS believe that § 1.752–6T does not result in the inappropriate denial of a bona fide loss. The exceptions in § 1.752–6T generally limit the application of the regulations to transactions that are abusive in nature and that lack a business purpose. In addition, the regulations allow taxpayers to elect into § 1.752–7 so as to avoid the immediate basis reduction under § 1.752–6T. Recognizing, however, that some taxpayers may not have expected the approach taken in § 1.752–7 when engaging in transactions in prior years, § 1.752–6T employs rules similar to section 358(h) for partnership transactions.

Those commentators who suggested that the IRS issued § 1.752–6T to "bootstrap" its litigating position in Notice 2000–44 pointed to the fact that Notice 2000–44 did not mention that regulations would be issued in the future to challenge the transactions described in that notice. As discussed earlier, the Act was enacted with a retroactive effective date and granted the Treasury Department and the IRS the authority to issue retroactive regulations. The Treasury Department and the IRS believe that they have appropriately exercised this grant of authority. Also, Notice 2000–44 was released on August 11, 2000. The Act was not enacted into law until December 15, 2000, after the release of Notice 2000–44. Therefore, the Treasury Department and the IRS could not reference regulations promulgated under the Act in Notice 2000–44.

The Treasury Department and the IRS have concluded that the Secretary's authority under section 309(c) is not limited to addressing assumptions of liabilities by corporations from partnerships. The plain language of the legislative directive is not so limited and the legislative history does not support such a limitation.

To the contrary, the Treasury Department and the IRS believe that the rules of § 1.752–6T carry out the explicit directive of section 309(c) of the Act by applying to partnership transactions rules that are analogous to the rules that apply to corporate transactions under section 358(h). For example, if the transactions described in Notice 2000–44 were effected through a contribution to a corporation, rather than a contribution to a partnership, section 358(h) would generally apply to such a transaction, causing a basis reduction identical to that provided by § 1.752–6T.

Section 7805(b) addresses when a regulation (temporary, proposed, or final) may be effective retroactively. Section 7805(b)(1) generally provides that no temporary, proposed, or final regulations relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates: (A) The date on which such regulation is filed with the **Federal Register**; (B) in the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the **Federal Register**; or (C) the date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public. However, section 7805(b) provides a list of exceptions to the general rule stated above. Included in that list, and relevant in this context, is section 7805(b)(6). Section 7805(b)(6) provides that the limitation may be superseded "by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation." Also included among the exceptions to the general rule in section 7805(b)(1) is section 7805(b)(3). Section 7805(b)(3) states that the "Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse."

The retroactive effective date of § 1.752–6T is in accordance with the directive in section 309(c) and (d)(2) of the Act and section 7805(b)(6). Furthermore, pursuant to section 7805(b)(3), the Secretary has determined that a retroactive effective date is appropriate to prevent abuse.

For these reasons, the Treasury Department and the IRS have concluded that § 1.752–6T is a valid exercise of the Secretary's regulatory authority under the Code and section 309 of the Act.

2. Extension of Time To Adopt the Provisions of § 1.752–7 in Lieu of § 1.752–6T

Section 1.752–6T(d)(2) provides that partnerships may elect to apply the provisions of § 1.752–7 of the proposed regulations to all assumptions of liabilities by the partnership occurring after October 18, 1999, and before June 24, 2003, in lieu of applying § 1.752–6T of the temporary regulations. The election must be filed with the first Federal income tax return filed by the partnership on or after September 24, 2003.

Several commentators expressed a need for additional time to make this election. In response to these comments, the election period described in § 1.752–6T(d)(2) has been extended. Under the extension, an election to apply the regulations under § 1.752–7, rather than the regulations under § 1.752–6, to all liabilities assumed by a partnership after October 18, 1999, and before June 24, 2003, must be filed with a Federal income tax return filed by the partnership on or after September 24, 2003, and on or before December 31, 2005.

3. Section 1.358–5T, Special Rules for Assumption of Liabilities

The preamble to the proposed regulations advised taxpayers that, with respect to an exchange to which section 358(a)(1) applies, the Treasury Department and the IRS were considering exercising their authority under section 358(h)(2) to issue regulations that would limit the exceptions to section 358(h)(1) to follow the exceptions set forth in the proposed regulations under § 1.752–7 (other than the *de minimis* exception). The preamble indicated that such regulations would be retroactive to the extent necessary to prevent abuse. No comments were received regarding the appropriate scope or substance of such regulations. The Treasury Department and the IRS have determined that removing the exception of section 358(h)(2)(B) (which applies where substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange) is necessary to prevent the abuse that section 358(h) was designed to prevent. Therefore, with respect to an exchange to which section 358(a)(1) applies, this document contains temporary regulations providing that the exception contained in section 358(h)(2)(B) does not apply to exchanges under section 358(a)(1) in which liabilities are assumed on or after June 24, 2003.

4. Section 752–7 Liability

Commentators have asked for clarification on whether an obligation could be a § 1.752–1 liability in part and a § 1.752–7 liability in part. Certain obligations that create liabilities under § 1.752–1 may also create § 1.752–7 liabilities. For example, a fixed obligation that gives rise to basis can have a component portion that changes in value between the time the obligation is first incurred by the partner and the time that the partnership assumes the obligation due to changes in interest rates, stock price, or other similar factors. In these and other cases, the value of the obligation to the holder has

increased and, as a result, the cost to the obligor has increased by a like amount. The final regulations clarify that an obligation can be treated in part as a § 1.752–7 liability and in part as a § 1.752–1 liability.

5. Satisfaction Other Than by Economic Performance

The proposed regulations allow the § 1.752–7 liability partner to claim a loss or deduction upon "economic performance" of the obligation. Certain § 1.752–7 liabilities may be settled in cash or in kind, extinguished, satisfied or otherwise resolved under circumstances where there may not be an "economic performance" of the obligation within the meaning of that term. See section 461(h) and § 1.461–4. In addition, economic performance only applies to "liabilities" as defined in § 1.446–1(c)(1)(ii)(B), and it is possible that some § 1.752–7 liabilities may not come within the meaning of that term. As a result, the final regulations allow the § 1.752–7 liability partner to claim a loss or deduction under § 1.752–7 upon the "satisfaction of the § 1.752–7 liability". A § 1.752–7 liability is treated as satisfied on the date upon which, but for § 1.752–7, the partnership, or the assuming partner, would have been allowed to take the § 1.752–7 liability into account for federal tax purposes. The final regulations provide a nonexclusive list of examples of when the § 1.752–7 liability would be taken into account for these purposes.

6. Application of Section 704(c)

Under § 1.752–7(c), any § 1.752–7 liability assumed by a partnership in a § 1.752–7 liability transfer is treated under section 704(c) principles as having a built-in loss equal to the amount of the § 1.752–7 liability as of the date of the partnership's assumption of the § 1.752–7 liability. The proposed regulations provide that, if a § 1.752–7 liability is assumed from the partnership by a partner other than the § 1.752–7 liability partner, and the trade or business or de minimis exceptions does not apply, then section 704(c)(1)(B) does not apply to the assumption and instead the rules of § 1.752–7(g) apply. Commentators asked whether section 704(c)(1)(B) applies to the assumption of a § 1.752–7 liability by another partner if the trade or business or de minimis exceptions apply to that assumption. In addition, commentators questioned whether the successor partner rule of § 1.704–3(a)(7) applies to the built-in loss amount of the § 1.752–7 liability. The successor partner rule provides that, if a contributing partner transfers a partnership interest, built-in gain or loss must be allocated to the transferee partner as it would have been allocated to the transferor partner.

The intent of the Treasury Department and the IRS was that all of the rules of section 704(c), § 1.704–3, and § 1.704–4, including section 704(c)(1)(B), apply to § 1.752–7 liabilities unless otherwise specifically stated. The § 1.752–7 regulations have been modified to make this clear. In addition, § 1.704–3 has been amended to provide that § 1.752–7 liabilities are section 704(c) property and to provide that in general, the successor partner rule does not apply to § 1.752–7 liabilities.

Comments were also received regarding the application of section 704(c) principles to the extent that a § 1.752–7 liability has decreased after the partnership's assumption of the liability. Consistent with the principles of § 1.704–3, the final regulations provide that, if there is a post-assumption change in the value of the § 1.752–7 liability, resulting in an obligation amount that is either greater or less than the initial amount of the obligation, the change in the amount will be treated as a section 704(b) and not a section 704(c) item, thereby creating book income or loss to be allocated to the partners. The final regulations also provide that, if the value of the § 1.752–7 liability decreases after the assumption of the obligation by the partnership, the "ceiling rule" applies, and the partnership and the partners are entitled to adopt one of the reasonable methods specified in § 1.704–3 to correct any ceiling rule disparities.

7. Section 1.752–7 Liabilities That Are Capitalized and Not Deducted

The proposed regulations make reference in several places to a "deduction or capital expense", but no rules are provided as to how the capital expense is taken into account. For example, no rules are provided in the proposed regulations for situations where the contributing partner is still a partner in the partnership at the time that the obligation is recognized for federal tax purposes and capitalized into the tax basis of one or more assets of the partnership.

The final regulations add a rule to § 1.704–3 providing that, to the extent a partnership properly capitalizes all or a portion of an item as described in paragraph § 1.704–3(a)(12), then the item or items to which such cost is properly capitalized is treated as section 704(c) property with the same amount of built-in loss as corresponds to the amount capitalized. Similar rules are provided under §§ 1.704–4 and 1.737–2.

In addition, the proposed regulations do not provide any guidance as to the appropriate tax treatment if a triggering event occurs after a § 1.752–7 liability has been capitalized into the basis of one or more assets of the partnership. Under the final regulations, no reduction in the partner's basis in the partnership interest is required with respect to such a capitalized amount as a result of the triggering event, but, after the triggering event, neither the partnership nor the remaining partners may use the capitalized basis.

8. Exception for Trading and Investment Partnerships

The proposed regulations contain an exception to § 1.752–7(e), (f), and (g) for assumptions of liabilities in connection with the contribution of an associated trade or business, provided that the partnership continues to carry on that trade or business after the contribution. The proposed regulations provide that, for this purpose, a trade or business generally does not include the activity of acquiring, holding, or disposing of financial instruments, unless such activity is carried on by an entity registered with the Securities and Exchange Commission as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a).

The exception for entities registered as management companies was intended to apply narrowly to master-feeder partnerships; however, it appears that the exception could apply to a broader range of entities, some of which could be carrying on the types of transactions that section 309 of the Act and these regulations were intended to address. Consequently, the Treasury Department and the IRS have removed the exception for entities registered as management companies.

The Treasury Department and the IRS do not believe that eliminating the exception will create a substantial burden for master-feeder partnerships, because interests in these partnerships are not regularly sold, and because distributions by these partnerships typically take the form of nonliquidating distributions of cash. Accordingly, master-feeder partnerships are unlikely to engage in triggering events that would implicate this regulation.

Therefore, under the final regulations, the activity of acquiring, holding, dealing in, or disposing of financial instruments is not treated as a trade or business even if engaged in by an entity registered as a management company. For assumptions of liabilities on or after June 24, 2003, and before May 26, 2005, however, entities registered as

management companies may rely on the exception to the trade or business definition in the proposed regulations.

9. Technical Terminations, Mergers, and Divisions

Section 1.708–1(b)(4) provides that if a partnership is terminated under section 708(b)(1)(B) by a sale or exchange of an interest, the partnership is deemed to contribute all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership is deemed to distribute interests in the new partnership to the purchasing partner and the other remaining partners.

A commentator asked whether the rules provided in § 1.752–7 apply to the contribution and distribution of partnership interests deemed to occur under § 1.708–1(b)(4). Rules have been added to the final regulations to clarify how the regulations apply to technical terminations and partnership mergers and divisions. These rules are designed to ensure that, after a technical termination, merger, or division, the partners that were § 1.752–7 liability partners of the prior partnership continue to be § 1.752–7 liability partners of the new partnership, and that built-in loss associated with the § 1.752–7 liability does not shift from one partner to another partner. In addition, these rules are designed to ensure that a deemed assumption of a liability as a result of a technical termination of a partnership does not create any new § 1.752–7 liabilities that did not exist prior to the technical termination.

Accordingly, § 1.752–7(b)(6)(ii) of the final regulations provides that, in determining if a deemed contribution of assets and assumption of liability as a result of a technical termination is treated as a § 1.752–7 liability transfer, only liabilities that were § 1.752–7 liabilities of the terminating partnership are taken into account and, then, only to the extent of the amount of the liability that was subject to § 1.752–7 prior to the technical termination.

In addition, the definition of a § 1.752–7 liability partner has been amended to clarify that, if, in a transaction described in § 1.752–7(e)(3), a partnership (lower-tier partnership) assumes a § 1.752–7 liability from another partnership (upper-tier partnership), then any partners that were § 1.752–7 liability partners of the upper-tier partnership continue to be § 1.752–7 liability partners of the lower-tier partnership with respect to the remaining built-in loss associated with the § 1.752–7 liability at the time of the assumption of the § 1.752–7 liability by the lower-tier partnership from the upper-tier partnership. Any new built-in loss associated with the § 1.752–7 liability that is created on the assumption of the § 1.752–7 liability from the upper-tier partnership by the lower-tier partnership is shared by all the partners of the upper-tier partnership in accordance with their interests in the upper-tier partnership, and each partner of the upper-tier partnership is treated as a § 1.752–7 liability partner with respect to that new built-in loss.

The definition of § 1.752–7 liability partner has also been amended to provide that, if, in a transaction described in § 1.752–7(e)(3), an interest in a partnership (lower-tier partnership) that has assumed a § 1.752–7 liability is distributed by a partnership (upper-tier partnership) that is the § 1.752–7 liability partner with respect to that liability, then the persons receiving interests in the lower-tier partnership are § 1.752–7 liability partners with respect to the lower-tier partnership to the same extent that they were prior to the distribution. In addition, § 1.752–7(e)(3) has been amended to provide that a distribution of an interest in a lower-tier partnership is exempt from the application of § 1.752–7(e) only if the partners that were § 1.752–7 liability partners with respect to the lower-tier partnership prior to the distribution continue to be § 1.752–7 liability partners with respect to the lower-tier partnership after the distribution.

10. Disguised Sale Rules

Section 707(a)(2)(B) provides that where there is a direct or indirect transfer of money or other property by a partner to a partnership and a related direct or indirect transfer of money or property by the partnership to such partner and the transfers, when viewed together, are properly characterized as a sale or exchange, such transfers shall be treated either as a transaction between the partnership and one who is not a partner, or as a transaction between two or more partners acting other than in their capacity as members of the partnership. Section 1.752–7(a)(2) of the proposed regulations provides that the assumption of a § 1.752–7 liability is not treated as an assumption of a liability or as a transfer of cash for purposes of section 707(a)(2)(B). One commentator noted that the language contained in the proposed regulations was not consistent with § 1.707–5(a), which takes into account all liabilities, regardless of whether those liabilities are taken into account under section 752.

The intent of the proposed regulations under section 752 was not to override the disguised sale rules under section 707, which may include § 1.752–7 liabilities as consideration. Therefore, § 1.752–7(a)(2) has been removed.

11. Revisions to § 1.704–1(b)(2)(iv)

Under section 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partnership agreement provided that those allocations have substantial economic effect. If the allocations under the partnership agreement do not have substantial economic effect or the partnership agreement does not provide as to a partner's distributive share of partnership items, then the partner's distributive share of such items is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances).

Section 1.704–1(b) describes various requirements that must be met for partnership allocations to have substantial economic effect. Among these requirements is that (except as otherwise provided in § 1.704–1(b)) the partnership agreement must provide for the determination and maintenance of capital accounts in accordance with the rules of § 1.704–1(b)(2)(iv).

Section 1.704–1(b)(2)(iv)(*b*) generally requires that a partner's capital account be increased by the value of property contributed by the partner to the partnership net of liabilities secured by such contributed property that the partnership is considered to assume or take subject to under section 752, and be decreased by the value of property distributed by the partnership to the partner net of liabilities secured by such distributed property that the partner is considered to assume or take subject to under section 752. Section 1.704–1(b)(2)(iv)(*c*) requires that a partner's capital account be increased by liabilities of the partnership that are assumed by such partner (other than liabilities described in § 1.704–1(b)(2)(iv)(*b*)(*5*)), and be decreased by liabilities of the partner that are assumed by the partnership (other than liabilities described in § 1.704–1(b)(2)(iv)(*b*)(*2*)). The proposed regulations revised § 1.704–1(b)(2)(iv)(*b*) to take into account all liabilities to which the contributed or distributed property is subject, not just liabilities described in section 752. The proposed regulations did not revise § 1.704–1(b)(2)(iv)(*c*), because that section is not limited to assumptions of liabilities described in section 752.

A commentator suggested that, if all liabilities are covered by § 1.704–1(b)(2)(iv)(*b*), then § 1.704–1(b)(2)(iv)(*c*) did not have any effect and should be removed. The final regulations do not adopt this comment, because the Treasury Department and the IRS believe that § 1.704–1(b)(2)(iv)(*c*) has significance even though § 1.704–1(b)(2)(iv)(*b*) is no longer limited to liabilities described in section 752. Section 1.704–1(b)(2)(iv)(*b*) applies only to situations in which liabilities are assumed by the partnership or the partner in connection with the contribution or distribution of property, or contributed or distributed property is taken subject to liabilities. Section 1.704–1(b)(2)(iv)(*b*) does not apply if liabilities are assumed by the partnership or a partner other than in connection with a contribution or distribution; these assumptions are covered by § 1.704–1(b)(2)(iv)(*c*).

12. Notification Upon Satisfaction of the § 1.752–7 Liability

One commentator suggested that, to prevent the loss of a deduction to the § 1.752–7 partner, the regulations should require the assuming partnership or partner to notify the § 1.752–7 liability partner of the satisfaction of the § 1.752–7 liability. The proposed regulations impose no penalty on the partnership for failure to notify the § 1.752–7 liability partner. The commentator also suggested that the § 1.752–7 liability partner be required to keep contact information current with the assuming partnership or partner.

The Treasury Department and the IRS do not believe that imposing additional requirements is necessary in these circumstances. It is anticipated that the § 1.752–7 liability partner, upon entering the partnership, will negotiate with the partnership for the necessary notification. Therefore, this comment was not adopted.

13. Treatment of § 1.752–7 Liabilities

Commentators have requested that the final regulations include guidance on the recourse or nonrecourse treatment of § 1.752–7 liabilities for all purposes of subchapter K. Under the proposed regulations, a § 1.752–7 liability is treated as a nonrecourse liability solely for purposes of § 1.704–2, dealing with the allocation of nonrecourse deductions among the partners. The only other provision that the Treasury Department and the IRS are aware of for which the characterization of a § 1.752–7 liability as recourse or nonrecourse is § 1.707–5 (addressing the treatment of liabilities for purposes of the disguised sale rules of section 707(a)(2)(B)), and § 1.707–5 already provides adequate rules for determining if a § 1.752–7 liability is recourse or nonrecourse. Because a § 1.752–7 liability is not, by definition, a § 1.752–1 liability, the recourse or nonrecourse nature of a § 1.752–7 liability is not relevant for purposes of §§ 1.752–1 through 1.752–5. For this reason, this comment was not adopted.

14. Valuation of § 1.752–7 Liabilities

Comments were received requesting that the final regulations include guidance on acceptable methods for identifying and valuing § 1.752–7 liabilities, as well as identifying the appropriate discount rate for determining the liability's present value.

The Treasury Department and the IRS believe that such matters are best left to the negotiation of the financial arrangement among the parties and are beyond the scope of this regulation. In an arm's length transaction, the parties will take the potential occurrence of these obligations into account in arriving at the agreement among the parties that will govern their affairs, including the appropriate valuation methodology to apply to these obligations. Accordingly, the final regulations do not adopt this comment.

However, the final regulations clarify that, if the obligation arose under a contract in exchange for rights granted to the obligor under that contract, and those contractual rights are contributed to the partnership in connection with the partnership's assumption of the contractual obligation, then the amount of the § 1.752–7 liability is the amount of cash, if any, that a willing assignor would pay to a willing assignee to assume the entire contract.

Effective Date

The final § 1.752–6 regulations apply to assumptions of liabilities by a partnership occurring after October 18, 1999, and before June 24, 2003. All of the other final regulations in this Treasury decision apply to liabilities assumed on or after June 24, 2003, except as otherwise noted.

Special Analyses

These final and temporary regulations are necessary to prevent abusive transactions involving transfers to partnerships and corporations of the type Section 358(h) was enacted to prevent. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) with respect to the temporary regulations, and for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3) with respect to the final and temporary regulations.

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the final regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few partnerships engage in the type of transactions that are subject to these regulations (assumptions of liabilities not described in section 752(a) and (b) from a partner). In addition, available data indicates that most partnerships that engage in the type of transactions that are subject to these regulations are large partnerships. Certain broad exceptions to the application of these regulations (including a de minimis exception) further limit the economic impact of these regulations on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. For the applicability of the Regulatory Flexibility Act to the temporary regulations in this document (§ 1.358–5T), refer to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Laura Nash, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.358–5T also issued under 26 U.S.C. 358(h)(2). * * *

Section 1.358–7 also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001). * * *

Section 1.752–1(a) also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001).

Section 1.752–6 also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001)

Section 1.752–7 also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001). * * *

■ **Par. 2.** Section 1.358–5T is added to read as follows:

§ 1.358–5T Special rules for assumption of liabilities (temporary).

(a) *In general.* Section 358(h)(2)(B) does not apply to an exchange occurring on or after June 24, 2003.

(b) *Effective dates.* This section applies to exchanges occurring on or after June 24, 2003.

■ **Par. 3.** Section 1.358–7 is added to read as follows:

§ 1.358–7 Transfers by partners and partnerships to corporations.

(a) *Transfers by partners of partnership interests.* For purposes of section 358(h), a transfer of a partnership interest to a corporation is treated as a transfer of the partner's share of each of the partnership's assets and an assumption by the corporation of the partner's share of partnership liabilities (including section 358(h) liabilities, as defined in paragraph (d) of this section). See paragraph (e) *Example 2* of this section.

(b) *Transfers by partnerships.* If a corporation assumes a section 358(h) liability from a partnership in an exchange to which section 358(a) applies, then, for purposes of applying section 705 (determination of basis of partner's interest) and § 1.704–1(b), any reduction, under section 358(h)(1), in the partnership's basis in corporate stock received in the transaction is treated as an expenditure of the partnership described in section 705(a)(2)(B). See paragraph (e) *Example 1* of this section. This expenditure must be allocated among the partners in accordance with section 704(b) and (c) and § 1.752–7(c). If a partner's share of the reduction, under section 358(h)(1), in the partnership's basis in corporate stock exceeds the partner's basis in the partnership interest, then the partner recognizes gain equal to the excess, which is treated as gain from the sale or exchange of a partnership interest. This paragraph does not apply to the extent that § 1.752–7(j)(4) applies to the assumption of the § 1.752–7 liability by the corporation.

(c) *Assumption of section 358(h) liability by partnership followed by transfer of partnership interest or partnership property to a corporation—trade or business exception.* Where a partnership assumes a section 358(h) liability from a partner and, subsequently, the partner transfers all or part of the partner's partnership interest to a corporation in an exchange to which section 358(a) applies, then, for purposes of applying section 358(h)(2), the section 358(h) liability is treated as associated only with the contribution made to the partnership by that partner. See paragraph (e) *Example 2* of this section. Similar rules apply where a partnership assumes a section 358(h) liability of a partner and a corporation subsequently assumes that section 358(h) liability from the partnership in an exchange to which section 358(a) applies.

(d) *Section 358(h) liabilities defined.* For purposes of this section, section 358(h) liabilities are liabilities described in section 358(h)(3).

(e) *Examples.* The following examples illustrate the provisions of this section. Assume, for purposes of these examples, that the obligation assumed by the corporation does not reduce the shareholder's basis in the corporate stock under section 358(d). The examples are as follows:

Example 1. Transfer of partnership property to corporation. In 2004, in an exchange to which section 351(a) applies, PRS, a cash basis taxpayer, transfers $2,000,000 cash to Corporation X, also a cash basis taxpayer, in exchange for Corporation X shares and the assumption by Corporation X of $1,000,000 of accounts payable incurred by PRS. At the time of the exchange, PRS has two partners, A, a 90% partner, who has a $2,000,000 basis in the PRS interest, and B, a 10% partner, who has a $50,000 basis in the PRS interest. Assume that, under section 358(h)(1), PRS's basis in the Corporation X stock is reduced by the accounts payable assumed by Corporation X ($1,000,000). Under paragraph (b) of this section, A's and B's bases in PRS must be reduced, but not below zero, by their respective shares of the section 358(h)(1) basis reduction. If either partner's share of the section 358(h)(1) basis reduction exceeds the partner's basis in the partnership interest, then the partner recognizes gain equal to the excess. A's share of the section 358(h) basis reduction is $900,000 (90% of $1,000,000). Therefore, A's basis in the PRS interest is reduced to $1,100,000 ($2,000,000 − $900,000). B's share of the section 358(h) basis reduction is $100,000 (10% of $1,000,000). Because B's share of the section 358(h) basis reduction ($100,000) exceeds B's basis in the PRS interest ($50,000), B's basis in the PRS interest is reduced to $0 and B recognizes $50,000 of gain. This gain is treated as gain from the sale of the PRS interest.

Example 2. Transfer of partnership interest to corporation. In 2004, A contributes undeveloped land with a value and basis of $4,000,000 in exchange for a 50% interest in PRS and an assumption by PRS of $2,000,000 of pension liabilities from a separate business that A conducts. A's basis in the PRS interest immediately after the contribution is A's basis in the land, $4,000,000, unreduced by the amount of the pension liabilities. PRS develops the land as a landfill. Before PRS has economically performed with respect to the pension liabilities, A transfers A's interest in PRS to Corporation X, in an exchange to which section 351 applies. At the time of the exchange, the value of A's PRS interest is $2,000,000, A's basis in PRS is $4,000,000, and A has no share of partnership liabilities other than the pension liabilities. For purposes of applying section 358(h), the transfer of the PRS interest to Corporation X is treated as a transfer to Corporation X of A's share of PRS assets and an assumption by Corporation X of A's share of the pension liabilities of PRS ($2,000,000). Because the pension liabilities were not assumed by PRS from A in an exchange in which the trade or business associated with the liability was transferred to PRS, the transfer of the PRS interest to Corporation X is not excepted from section 358(h) under section 358(h)(2). See paragraph (c) of this section. Under section 358(h), A's basis in the Corporation X stock is reduced by the $2,000,000 of pension liabilities.

(f) *Effective date.* This section applies to assumptions of liabilities by a corporation occurring on or after June 24, 2003.

■ **Par. 4.** Section 1.704–1 is amended as follows:

■ 1. Paragraph (b)(1)(ii)(*a*) is amended by removing the language "The" at the beginning of the first sentence and adding "Except as otherwise provided in this section, the" in its place.

■ 2. Paragraph (b)(2)(iv)(*b*) is amended by adding a sentence at the end of the paragraph.

■ 3. Paragraph (b)(2)(iv)(*b*)(*2*) is amended by removing the language "secured by such contributed property" in the parenthetical.

■ 4. Paragraph (b)(2)(iv)(*b*)(*2*) is further amended by removing the language "under section 752" in the parenthetical.

■ 5. Paragraph (b)(2)(iv)(*b*)(*5*) is amended by removing the language "secured by such distributed property" in the parenthetical.

■ 6. Paragraph (b)(2)(iv)(*b*)(*5*) is further amended by removing the language "under section 752" in the parenthetical.

The addition reads as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(*b*) * * * For liabilities assumed before June 24, 2003, references to liabilities in this paragraph (b)(2)(iv)(*b*) shall include only liabilities secured by the contributed or distributed property that are taken into account under section 752(a) and (b).

* * * * *

§ 1.704–2 [Amended]

■ **Par. 5.** In § 1.704–2, paragraph (b)(3) is amended by adding the language "or a § 1.752–7liability (as defined in § 1.752–7(b)(3)(i)) assumed by the partnership from a partner on or after June 24, 2003" at the end of the sentence.

■ **Par. 6.** Section 1.704–3 is amended as follows:

■ 1. The paragraph heading for (a)(7) is revised.

■ 2. Two sentences are added to the end of paragraph (a)(7).

■ 3. Paragraphs (a)(8)(ii) and (iii) are removed and reserved and paragraph (a)(8)(iv) is added.

■ 4. Paragraph (a)(12) is added.

■ 5. Two additional sentences are added at the end of paragraph (f).

The revisions and additions read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(7) *Transfer of a partnership interest.* * * * This rule does not apply to any person who acquired a partnership interest from a § 1.752–7 liability partner in a transaction to which paragraph (e)(1) of § 1.752–7 applies. See § 1.752–7(c)(1).

(8) * * * (i) * * *

(ii) [Reserved]

(iii) [Reserved]

(iv) *Capitalized amounts.* To the extent that a partnership properly capitalizes all or a portion of an item as described in paragraph (a)(12) of this section, then the item or items to which such cost is properly capitalized is treated as section 704(c) property with the same amount of built-in loss as corresponds to the amount capitalized.

* * * * *

(12) *§ 1.752–7 liabilities.* Except as otherwise provided in § 1.752–7, § 1.752–7 liabilities (within the meaning of § 1.752–7(b)(2)) are section 704(c) property (built-in loss property that at the time of contribution has a book value that differs from the contributing partner's adjusted tax basis) for purposes of applying the rules of this section. See § 1.752–7(c). To the extent that the built-in loss associated with the § 1.752–7 liability exceeds the cost of satisfying the § 1.752–7 liability (as defined in § 1.752–7(b)(3)), the excess creates a "ceiling rule" limitation, within the meaning of § 1.704–3(b)(1), subject to the methods of allocation set forth in § 1.704–3(b), (c) and (d).

* * * * *

(f) * * * Except as otherwise provided in § 1.752–7(k), paragraphs (a)(8)(iv) and (a)(12) apply to § 1.752–7 liability transfers, as defined in § 1.752–7(b)(4), occurring on or after June 24, 2003. See § 1.752–7(k).

■ **Par. 7.** Section 1.704–4 is amended as follows:

■ 1. The paragraph heading for (d)(1) is revised.

■ 2. Paragraphs (d)(1)(ii) and (iii) are removed and reserved and paragraph (d)(1)(iv) is added.

■ 3. Paragraph (g) is revised.

The additions and revisions read as follows:

§ 1.704–4 Distribution of contributed property.

(d) *Special rules*—(1) *Nonrecognition transactions, installment obligations, contributed contracts, and capitalized costs*—(i) * * *

(ii) [Reserved]

(iii) [Reserved]

(iv) *Capitalized costs.* Property to which the cost of section 704(c) property is properly capitalized is treated as section 704(c) property for purposes of section 704(c)(1)(B) and this section to the extent that such property is treated as section 704(c) property under § 1.704–3(a)(8)(iv). See § 1.737–2(d)(3) for a similar rule in the context of section 737.

* * * * *

(g) *Effective dates.* This section applies to distributions by a partnership to a partner on or after January 9, 1995, except that paragraph (d)(1)(iv) applies to distributions by a partnership to a partner on or after June 24, 2003.

■ **Par. 8.** Section 1.705–1 is amended by adding paragraph (a)(8) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(8) For basis adjustments necessary to coordinate sections 705 and 358(h), see § 1.358–7(b). For certain basis adjustments with respect to a § 1.752–7 liability assumed by a partnership from a partner, see § 1.752–7.

* * * * *

■ **Par. 9.** Section 1.737–2 is amended as follows:

■ 1. The paragraph heading for (d)(3) is revised.

■ 2. Paragraphs (d)(3)(ii) and (iii) are removed and reserved and paragraph (d)(3)(iv) is added.

The additions and revisions read as follows:

§ 1.737–2 Exceptions and special rules.

(d) * * *

(3) *Nonrecognition transactions, installment sales, contributed contracts, and capitalized costs*—(i) * * *

(ii) [Reserved]

(iii) [Reserved]

(iv) *Capitalized costs.* Property to which the cost of section 704(c) property is properly capitalized is treated as section 704(c) property for purposes of section 737 to the extent that such property is treated as section 704(c) property under § 1.704–3(a)(8)(iv). See § 1.704–4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

* * * * *

■ **Par. 10.** Section 1.737–5 is revised to read as follows:

§ 1.737–5 Effective dates.

Sections 1.737–1, 1.737–2, 1.737–3, and 1.737–4 apply to distributions by a partnership to a partner on or after January 9, 1995, except that § 1.737–2(d)(3)(iv) applies to distributions by a partnership to a partner on or after June 24, 2003.

■ **Par. 11.** Section 1.752–0 is amended as follows:

■ 1. The section heading and introductory text of § 1.752–0 are revised.

■ 2. An entry for § 1.752–1(a)(4) is added.

■ 3. Entries for § 1.752–1(a)(4)(i), (ii), (iii), and (iv) are added.

■ 4. Entries for § 1.752–6 and § 1.752–7 are added.

The revision and additions read as follows:

§ 1.752–0 Table of contents.

This section lists the major paragraphs that appear in §§ 1.752–1 through 1.752–7.

§ 1.752–1 Treatment of partnership liabilities.

(a) * * *

(4) Liability defined.

(i) In general.

(ii) Obligation.

(iii) Other liabilities.

(iv) Effective date.

* * * * *

§ 1.752–6 Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003.

(a) In general.

(b) Exceptions.

(1) In general.

§ 1.752–7 Partnership assumption of partner's § 1.752–7 liability on or after June 24, 2003.

■ **Par. 12.** In § 1.752–1, paragraph (a)(4) is added to read as follows:

§ 1.752–1 Treatment of partnership liabilities.

(a) * * *

(4) *Liability defined*—(i) *In general.* An obligation is a liability for purposes of section 752 and the regulations thereunder (§ 1.752–1 liability), only if, when, and to the extent that incurring the obligation—

(A) Creates or increases the basis of any of the obligor's assets (including cash);

(B) Gives rise to an immediate deduction to the obligor; or

(C) Gives rise to an expense that is not deductible in computing the obligor's taxable income and is not properly chargeable to capital.

(ii) *Obligation.* For purposes of this paragraph and § 1.752–7, an obligation is any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Internal Revenue Code. Obligations include, but are not limited to, debt obligations, environmental obligations, tort obligations, contract obligations, pension obligations, obligations under a short sale, and obligations under derivative financial instruments such as options, forward contracts, futures contracts, and swaps.

(iii) *Other liabilities.* For obligations that are not § 1.752–1 liabilities, see §§ 1.752–6 and 1.752–7.

(iv) *Effective date.* Except as otherwise provided in § 1.752–7(k), this paragraph (a)(4) applies to liabilities that are incurred or assumed by a partnership on or after June 24, 2003.

* * * * *

§ 1.752–5(a) [Amended]

■ **Par. 13.** In § 1.752–5, paragraph (a) is amended by removing the language "Unless" at the beginning of the first sentence and adding "Except as otherwise provided in §§ 1.752–1 through 1.752–4, unless" in its place.

■ **Par. 14.** Section 1.752–6 is added to read as follows:

§ 1.752–6 Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003.

(a) *In general.* If, in a transaction described in section 721(a), a partnership assumes a liability (defined in section 358(h)(3)) of a partner (other than a liability to which section 752(a) and (b) apply), then, after application of section 752(a) and (b), the partner's basis in the partnership is reduced (but not below the adjusted value of such interest) by the amount (determined as of the date of the exchange) of the liability. For purposes of this section, the adjusted value of a partner's interest in a partnership is the fair market value of that interest increased by the partner's share of partnership liabilities under §§ 1.752–1 through 1.752–5.

(b) *Exceptions*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the exceptions contained in section 358(h)(2)(A) and (B) apply to this section.

(2) *Transactions described in Notice 2000–44.* The exception contained in section 358(h)(2)(B) does not apply to an assumption of a liability (defined in section 358(h)(3)) by a partnership as part of a transaction described in, or a transaction that is substantially similar to the transactions described in, Notice 2000–44 (2000–2 C.B. 255). See § 601.601(d)(2) of this chapter.

(c) *Example.* The following example illustrates the principles of paragraph (a) of this section:

Example. In 1999, A and B form partnership PRS. A contributes property with a value and basis of $200, subject to a nonrecourse debt obligation of $50 and a fixed or contingent obligation of $100 that is not a liability to which section 752(a) and (b) applies, in exchange for a 50% interest in PRS. Assume that, after the contribution, A's share of partnership liabilities under §§ 1.752–1 through 1.752–5 is $25. Also assume that the $100 liability is not associated with a trade or business contributed by A to PRS or with assets contributed by A to PRS. After the contribution, A's basis in PRS is $175 (A's basis in the contributed land ($200) reduced by the nonrecourse debt assumed by PRS ($50), increased by A's share of partnership

liabilities under §§ 1.752–1 through 1.752–5 ($25)). Because A's basis in the PRS interest is greater than the adjusted value of A's interest, $75 (the fair market value of A's interest ($50) increased by A's share of partnership liabilities ($25)), paragraph (a) of this section operates to reduce A's basis in the PRS interest (but not below the adjusted value of that interest) by the amount of liabilities described in section 358(h)(3) (other than liabilities to which section 752(a) and (b) apply) assumed by PRS. Therefore, A's basis in PRS is reduced to $75.

(d) *Effective date*—(1) *In general.* This section applies to assumptions of liabilities occurring after October 18, 1999, and before June 24, 2003.

(2) *Election to apply § 1.752–7.* The partnership may elect, under § 1.752–7(k)(2), to apply the provisions referenced in § 1.752–7(k)(2)(ii) to all assumptions of liabilities by the partnership occurring after October 18, 1999, and before June 24, 2003. Section 1.752–7(k)(2) describes the manner in which the election is made.

§ 1.752–6T [Removed]

■ **Par. 15.** Section 1.752–6T is removed.

■ **Par. 16.** Section 1.752–7 is added to read as follows:

§ 1.752–7 Partnership assumption of partner's § 1.752–7 liability on or after June 24, 2003.

(a) *Purpose and structure.* The purpose of this section is to prevent the acceleration or duplication of loss through the assumption of obligations not described in § 1.752–1(a)(4)(i) in transactions involving partnerships. Under paragraph (c) of this section, any such obligation that is assumed by a partnership from a partner in a transaction governed by section 721(a) is treated as section 704(c) property. Paragraphs (e), (f), and (g) of this section provide rules for situations where a partnership assumes such an obligation from a partner and, subsequently, that partner transfers all or part of the partnership interest, that partner receives a distribution in liquidation of the partnership interest, or another partner assumes part or all of that obligation from the partnership. These rules prevent the duplication of loss by prohibiting the partnership and any person other than the partner from whom the obligation was assumed from claiming a deduction, loss, or capital expense to the extent of the built-in loss associated with the obligation. These rules also prevent the acceleration of loss by deferring the partner's deduction or loss attributable to the obligation (if any) until the satisfaction of the § 1.752–7 liability (within the meaning of paragraph (b)(8) of this section). Paragraph (d) of this section provides a number of exceptions to paragraphs (e), (f), and (g) of this section, including a de minimis exception. Paragraph (i) provides a special rule for situations in which an amount paid to satisfy a § 1.752–7 liability is capitalized into other partnership property. Paragraph (j) of this section provides special rules for tiered partnership transactions.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Assumption.* The principles of § 1.752–1(d) and (e) apply in determining if a § 1.752–7 liability has been assumed.

(2) *Adjusted value.* The adjusted value of a partner's interest in a partnership is the fair market value of that interest increased by the partner's share of partnership liabilities under §§ 1.752–1 through 1.752–5.

(3) *§ 1.752–7 liability*—(i) *In general.* A § 1.752–7 liability is an obligation described in § 1.752–1(a)(4)(ii) to the extent that either—

(A) The obligation is not described in § 1.752–1(a)(4)(i); or

(B) The amount of the obligation (under paragraph (b)(3)(ii) of this section) exceeds the amount taken into account under § 1.752–1(a)(4)(i).

(ii) *Amount and share of § 1.752–7 liability.* The amount of a § 1.752–7 liability (or, for purposes of paragraph (b)(3)(i) of this section, the amount of an obligation) is the amount of cash that a willing assignor would pay to a willing assignee to assume the § 1.752–7 liability in an arm's-length transaction. If the obligation arose under a contract in exchange for rights granted to the obligor under that contract, and those contractual rights are contributed to the partnership in connection with the partnership's assumption of the contractual obligation, then the amount of the § 1.752–7 liability or obligation is the amount of cash, if any, that a willing assignor would pay to a willing assignee to assume the entire contract. A partner's share of a partnership's § 1.752–7 liability is the amount of deduction that would be allocated to the partner with respect to the § 1.752–7 liability if the partnership disposed of all of its assets, satisfied all of its liabilities (other than § 1.752–7 liabilities), and paid an unrelated person to assume all of its § 1.752–7 liabilities in a fully taxable arm's-length transaction (assuming such payment would give rise to an immediate deduction to the partnership).

(iii) Example. In 2005, A, B, and C form partnership PRS. A contributes $10,000,000 in exchange for a 25% interest in PRS and PRS's assumption of a debt obligation. The debt obligation was issued for cash and the issue price was equal to the stated redemption price at maturity ($5,000,000). The debt obligation bears interest, payable quarterly, at a fixed rate of interest, which was a market rate of interest when the debt obligation was issued. At the time of the assumption, all accrued interest has been paid. Prior to the partnership assuming the obligation, interest rates decrease, resulting in the debt obligation bearing an above-market interest rate. Assume that, as a result of the decline in interest rates, A would have had to pay a willing assignee $6,000,000 to assume the debt obligation. The assumption of the debt obligation by PRS from A is treated as an assumption of a § 1.752–1(a)(4)(i) liability in the amount of $5,000,000 (the portion of the total amount of the debt obligation that has created basis in A's assets, that is, the $5,000,000 that was issued in exchange for the debt obligation) and an assumption of a § 1.752–7 liability in the amount of $1,000,000 (the difference between the total obligation, $6,000,000, and the § 1.752–1(a)(4)(i)liability, $5,000,000).

(4) *§ 1.752–7 liability transfer*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, a § 1.752–7 liability transfer is any assumption of a § 1.752–7 liability by a partnership from a partner in a transaction governed by section 721(a).

(ii) *Terminations under section 708(b)(1)(B).* In determining if a deemed contribution of assets and assumption of liability as a result of a technical termination is treated as a § 1.752–7 liability transfer, only § 1.752–7 liabilities that were assumed by the terminating partnership as part of an earlier § 1.752–7 liability transfer are taken into account and, then, only to the extent of the remaining built-in loss associated with that § 1.752–7 liability.

(5) *§ 1.752–7 liability partner*—(i) *In general.* A § 1.752–7 liability partner is a partner from whom a partnership assumes a § 1.752–7 liability as part of a § 1.752–7 liability transfer or any person who acquires a partnership interest from the § 1.752–7 liability partner in a transaction to which paragraph (e)(3) of this section applies.

(ii) *Tiered partnerships*—(A) *Assumption by a lower-tier partnership.* If, in a § 1.752–7 liability transfer, a partnership (lower-tier partnership) assumes a § 1.752–7 liability from another partnership (upper-tier partnership), then both the upper-tier partnership and the partners of the upper-tier partnership are § 1.752–7 liability partners. Therefore, paragraphs (e) and (f) of this section apply on a sale or liquidation of any partner's interest in the upper-tier partnership and on a sale or liquidation of the upper-tier partnership's interest in the lower-tier partnership. See paragraph (j)(3) of this section. If, in a § 1.752–7 liability transfer, the upper-tier partnership assumes a § 1.752–7 liability from a

partner; and, subsequently, in another § 1.752–7 liability transfer, a lower-tier partnership assumes that § 1.752–7 liability from the upper-tier partnership, then the partner from whom the upper-tier partnership assumed the § 1.752–7 liability continues to be the § 1.752–7 liability partner of the lower-tier partnership with respect to the remaining built-in loss associated with that § 1.752–7 liability. Any new built-in loss associated with the § 1.752–7 liability that is created on the assumption of the § 1.752–7 liability from the upper-tier partnership by the lower-tier partnership is shared by all the partners of the upper-tier partnership in accordance with their interests in the upper-tier partnership, and each partner of the upper-tier partnership is treated as a § 1.752–7 liability partner with respect to that new built-in loss. See paragraph (e)(3)(ii), *Example 3* of this section.

(B) *Distribution of partnership interest.* If, in a transaction described in § 1.752–7(e)(3), an interest in a partnership (lower-tier partnership) that has assumed a § 1.752–7 liability is distributed by a partnership (upper-tier partnership) that is the § 1.752–7 liability partner with respect to that liability, then the persons receiving interests in the lower-tier partnership are § 1.752–7 liability partners with respect to the lower-tier partnership to the same extent that they were prior to the distribution.

(6) *Remaining built-in loss associated with a § 1.752–7 liability.* (i) *In general.* The remaining built-in loss associated with a § 1.752–7 liability equals the amount of the § 1.752–7 liability as of the time of the assumption of the § 1.752–7 liability by the partnership, reduced by the portion of the § 1.752–7 liability previously taken into account by the § 1.752–7 liability partner under paragraph (j)(3) of this section and adjusted as provided in paragraph (c) of this section and § 1.704–3 for—

(A) Any portion of that built-in loss associated with the § 1.752–7 liability that is satisfied by the partnership on or prior to the testing date (whether capitalized or deducted); and

(B) Any assumption of all or part of the § 1.752–7 liability by the § 1.752–7 liability partner (including any assumption that occurs on the testing date).

(ii) *Partial dispositions and assumptions.* In the case of a partial disposition of the § 1.752–7 liability partner's partnership interest or a partial assumption of the § 1.752–7 liability by another partner, the remaining built-in loss associated with § 1.752–7 liability is pro rated based on the portion of the interest sold or the portion of the § 1.752–7 liability assumed.

(7) *§ 1.752–7 liability reduction*—(i) *In general.* The § 1.752–7 liability reduction is the amount by which the § 1.752–7 liability partner is required to reduce the basis in the partner's partnership interest by operation of paragraphs (e), (f), and (g) of this section. The § 1.752–7 liability reduction is the lesser of—

(A) The excess of the § 1.752–7 liability partner's basis in the partnership interest over the adjusted value of that interest (as defined in paragraph (b)(2) of this section); or

(B) The remaining built-in loss associated with the § 1.752–7 liability (as defined in paragraph (b)(6) of this section without regard to paragraph (b)(6)(ii) of this section).

(ii) *Partial dispositions and assumptions.* In the case of a partial disposition of the § 1.752–7 liability partner's partnership interest or a partial assumption of the § 1.752–7 liability by another partner, the § 1.752–7 liability reduction is pro rated based on the portion of the interest sold or the portion of the § 1.752–7 liability assumed.

(8) *Satisfaction of § 1.752–7 liability—In general.* A § 1.752–7 liability is treated as satisfied (in whole or in part) on the date on which the partnership (or the assuming partner) would have been allowed to take the § 1.752–7 liability into account for federal tax purposes but for this section. For example, a § 1.752–7 liability is treated as satisfied when, but for this section, the § 1.752–7 liability would give rise to—

(i) An increase in the basis of the partnership's or the assuming partner's assets (including cash);

(ii) An immediate deduction to the partnership or to the assuming partner;

(iii) An expense that is not deductible in computing the partnership's or the assuming partner's taxable income and not properly chargeable to capital account; or

(iv) An amount realized on the sale or other disposition of property subject to that liability if the property was disposed of by the partnership or the assuming partner at that time.

(9) *Testing date.* The testing date is—

(i) For purposes of paragraph (e) of this section, the date of the sale, exchange, or other disposition of part or all of the § 1.752–7 liability partner's partnership interest;

(ii) For purposes of paragraph (f) of this section, the date of the partnership's distribution in liquidation of the § 1.752–7 liability partner's partnership interest; and

(iii) For purposes of paragraph (g) of this section, the date of the assumption (or partial assumption) of the § 1.752–7 liability by a partner other than the § 1.752–7 liability partner.

(10) *Trade or business*—(i) *In general.* A trade or business is a specific group of activities carried on by a person for the purpose of earning income or profit, other than a group of activities consisting of acquiring, holding, dealing in, or disposing of financial instruments, if the activities included in that group include every operation that forms a part of, or a step in, the process of earning income or profit. Such group of activities ordinarily includes the collection of income and the payment of expenses. The group of activities must constitute the carrying on of a trade or business under section 162(a) (determined as though the activities were conducted by an individual).

(ii) *Examples.* The following examples illustrate the provisions of this paragraph (b)(10):

Example 1. Corporation Y owns, manages, and derives rental income from an office building and also owns vacant land that may be subject to environmental liabilities. Corporation Y contributes the land subject to the environmental liabilities to PRS in a transaction governed by section 721(a). PRS plans to develop the land as a landfill. The contribution of the vacant land does not constitute the contribution of a trade or business because Corporation Y did not conduct any significant business or development activities with respect to the land prior to the contribution.

Example 2. For the past 5 years, Corporation X has owned and operated gas stations in City A, City B, and City C. Corporation X transfers all of the assets associated with the operation of the gas station in City A to PRS for interests in PRS and the assumption by PRS of the § 1.752–7 liabilities associated with that gas station. PRS continues to operate the gas station in City A after the contribution. The contribution of the gas station to PRS constitutes the contribution of a trade or business.

Example 3. For the past 7 years, Corporation Z has engaged in the manufacture and sale of household products. Throughout this period, Corporation Z has maintained a research department for use in connection with its manufacturing activities. The research department has 10 employees actively engaged in the development of new products. Corporation Z contributes the research department to PRS in exchange for a PRS interest and the assumption by PRS of pension liabilities with respect to the employees of the research department. PRS continues the research operations on a contractual basis with several businesses, including Corporation Z. The contribution of the research operations to PRS constitutes a contribution of a trade or business.

(c) *Application of section 704(b) and (c) to assumed § 1.752–7 liabilities*—(1)

In general—(i) *Section 704(c).* Except as otherwise provided in this section, sections 704(c)(1)(A) and (B), section 737, and the regulations thereunder, apply to § 1.752–7 liabilities. See § 1.704–3(a)(12). However, § 1.704–3(a)(7) does not apply to any person who acquired a partnership interest from a § 1.752–7 liability partner in a transaction to which paragraph (e)(1) of this section applies.

(ii) *Section 704(b).* Section 704(b) and § 1.704–1(b) apply to a post-contribution change in the value of a § 1.752–7 liability. If there is a decrease in the value of a § 1.752–7 liability that is reflected in the capital accounts of the partners under § 1.704–1(b)(2)(iv)(*f*), the amount of the decrease constitutes an item of income for purposes of section 704(b) and § 1.704–1(b). Conversely, if there is an increase in the value of a § 1.752–7 liability that is reflected in the capital accounts of the partners under § 1.704–1(b)(2)(iv)(*f*), the amount of the increase constitutes an item of loss for purposes of section 704(b) and § 1.704–1(b).

(2) *Example.* The following example illustrates the provisions of this paragraph (c):

Example— (i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1 with a fair market value and basis of $400X, subject to a § 1.752–7 liability of $100X, for a 25% interest in PRS. B contributes $300X cash for a 25% interest in PRS, and C contributes $600X cash for a 50% interest in PRS. Assume that the partnership complies with the substantial economic effect safe harbor of § 1.704–1(b)(2). Under § 1.704–1(b)(2)(iv)(b), A's capital account is credited with $300X (the fair market value of Property 1, $400X, less the § 1.752–7 liability assumed by PRS, $100X). In accordance with §§ 1.752–7(c)(1)(i) and 1.704–3, the partnership can use any reasonable method for section 704(c) purposes. In this case, the partnership elects the traditional method under § 1.704–3(b) and also elects to treat the deductions or losses attributable to the § 1.752–7 liability as coming first from the built-in loss. In 2005, PRS earns $200X of income and uses it to satisfy the § 1.752–7 liability which has increased in value to $200X. Assume that the cost to PRS of satisfying the § 1.752–7 liability is deductible by PRS. The $200X of partnership income is allocated according to the partnership agreement, $50X to A, $50X to B, and $100X to C.

A		B		C		
Book	Tax	Book	Tax	Book	Tax	
$300	$400	$300	$300	$600	$600	Initial Contribution
50	50	50	50	100	100	Income
(25)	(125)	(25)	(25)	(50)	(50)	Satisfaction of Liability
$325	$325	$325	$325	$650	$650	

(ii) *Analysis.* Pursuant to paragraph (c) of this section, $100X of the deduction attributable to the satisfaction of the § 1.752–7 liability is specially allocated to A, the § 1.752–7 liability partner, under section 704(c)(1)(A) and § 1.704–3. No book item corresponds to this tax allocation. The remaining $100X of deduction attributable to the satisfaction of the § 1.752–7 liability is allocated, for both book and tax purposes, according to the partnership agreement, $25X to A, $25X to B, and $50X to C. If the partnership, instead, satisfied the § 1.752–7 liability over a number of years, the first $100X of deduction with respect to the § 1.752–7 liability would be allocated to A, the § 1.752–7 liability partner, before any deduction with respect to the § 1.752–7 liability would be allocated to the other partners. For example, if PRS were to satisfy $50X of the § 1.752–7 liability, the $50X deduction with respect to the § 1.752–7 liability would be allocated to A for tax purposes only. No deduction would arise for book purposes. If PRS later paid a further $100X in satisfaction of the § 1.752–7 liability, $50X of the deduction with respect to the § 1.752–7 liability would be allocated, solely for tax purposes, to A and the remaining $50X would be allocated, for both book and tax purposes, according to the partnership agreement. Under these circumstances, the partnership's method of allocating the built-in loss associated with the § 1.752–7 liability is reasonable.

(d) *Special rules for transfers of partnership interests, distributions of partnership assets, and assumptions of the § 1.752–7 liability after a § 1.752–7 liability transfer*—(1) *In general.* Except as provided in paragraphs (d)(2) and (i) of this section, paragraphs (e), (f), and (g) of this section apply to certain partnership transactions occurring after a § 1.752–7 liability transfer.

(2) *Exceptions*—(i) *In general.* Paragraphs (e), (f), and (g) of this section do not apply—

(A) If the partnership assumes the § 1.752–7 liability as part of a contribution to the partnership of the trade or business with which the liability is associated, and the partnership continues to carry on that trade or business after the contribution (for the definition of a trade or business, see paragraph (b)(10) of this section); or

(B) If, immediately before the testing date, the amount of the remaining built-in loss with respect to all § 1.752–7 liabilities assumed by the partnership (other than § 1.752–7 liabilities assumed by the partnership with an associated trade or business) in one or more § 1.752–7 liability transfers is less than the lesser of 10% of the gross value of partnership assets or $1,000,000.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (d)(2):

Example 1. For the past 5 years, Corporation X, a C corporation, has been engaged in Business A and Business B. In 2004, Corporation X contributes Business A, in a transaction governed by section 721(a), to PRS in exchange for a PRS interest and the assumption by PRS of pension liabilities with respect to the employees engaged in Business A. PRS plans to carry on Business A after the contribution. Because PRS has assumed the pension liabilities as part of a contribution to PRS of the trade or business with which the liabilities are associated, the treatment of the pension liabilities is not affected by paragraphs (e), (f), and (g) of this section with respect to any transaction occurring after the § 1.752–7 liability transfer of the pension liabilities.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that PRS also assumes from Corporation X certain pension liabilities with respect to the employees of Business B. At the time of the assumption, the amount of the pension liabilities with respect to the employees of Business A is $3,000,000 (the A liabilities) and the amount of the pension liabilities associated with the employees of Business B (the B liabilities) is $2,000,000. Two years later, Corporation X sells its interest in PRS to Y for $9,000,000. At the time of the sale, the remaining built-in loss associated with the A liabilities is $2,100,000, the remaining built-in loss associated with the B liabilities is $900,000, and the gross value of PRS's assets (excluding § 1.752–7 liabilities) is $20,000,000. Assume that PRS has no § 1.752–7 liabilities other than those assumed from Corporation X.

PRS Balance Sheet at Time of X's Sale of PRS Interest
(in millions)

Assets	Liabilities	
$20		Gross Assets (including Business A)
	($2.1)	A Liabilities
	(0.9)	B Liabilities

(ii) *Analysis.* The only liabilities assumed by PRS from Corporation X that were not assumed as part of Corporation X's contribution of Business A were the B liabilities. Immediately before the testing date, the remaining built-in loss associated with the B liabilities ($900,000) was less than the lesser of 10% of the gross value of PRS's assets ($2,000,000) or $1,000,000. Therefore, paragraph (d)(2)(i)(B) of this section applies to exclude Corporation X's sale of the PRS interest to Y from the application of paragraph (e) of this section.

(e) *Transfer of § 1.752–7 liability partner's partnership interest*—(1) *In general.* Except as provided in paragraphs (d)(2), (e)(3), and (i) of this section, immediately before the sale, exchange, or other disposition of all or a part of a § 1.752–7 liability partner's partnership interest, the § 1.752–7 liability partner's basis in the partnership interest is reduced by the § 1.752–7 liability reduction (as defined in paragraph (b)(7) of this section). No deduction, loss, or capital expense is allowed to the partnership on the satisfaction of the § 1.752–7 liability (within the meaning of paragraph (b)(8) of this section) to the extent of the remaining built-in loss associated with the § 1.752–7 liability (as defined in paragraph (b)(6) of this section). For purposes of section 705(a)(2)(B) and § 1.704–1(b)(2)(ii)(*b*) only, the remaining built-in loss associated with the § 1.752–7 liability is not treated as a nondeductible, noncapital expenditure of the partnership. Therefore, the remaining partners' capital accounts and bases in their partnership interests are not reduced by the remaining built-in loss associated with the § 1.752–7 liability. If the partnership (or any successor) notifies the § 1.752–7 liability partner of the satisfaction of the § 1.752–7 liability, then the § 1.752–7 liability partner is entitled to a loss or deduction. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount that the partnership would, but for this section, take into account on the partial satisfaction of the § 1.752–7 liability (but not, in total, more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount that the partnership would, but for this section, take into account on the satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the liability. To the extent that the § 1.752–7 liability reduction exceeds the amount that the partnership would, but for this section, take into account on the satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

(2) *Examples.* The following examples illustrate the principles of paragraph (e)(1) of this section:

Example 1. (i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1 with a fair market value of $5,000,000 and basis of $4,000,000 subject to a § 1.752–7 liability of $2,000,000 in exchange for a 25% interest in PRS. B contributes $3,000,000 cash in exchange for a 25% interest in PRS, and C contributes $6,000,000 cash in exchange for a 50% interest in PRS. In 2006, when PRS has a section 754 election in effect, A sells A's interest in PRS to D for $3,000,000. At the time of the sale, the basis of A's PRS interest is $4,000,000, the remaining built-in loss associated with the § 1.752–7 liability is $2,000,000, and PRS has no liabilities (as defined in § 1.752–1(a)(4)). Assume that none of the exceptions of paragraph (d)(2) of this section apply and that the satisfaction of the § 1.752–7 liability would have given rise to a deductible expense to A. In 2007, PRS pays $3,000,000 to satisfy the liability.

PRS Balance Sheet (in millions)

Assets			Liabilities/Equity		
Value	Basis		Value	Basis	
$5	$4	Property 1			
$9	$9	Cash			
			$2	-	§1.752-7 Liability
					Partner's Equity:
			$3	$4	A
			$3	$3	B
			$6	$6	C

(ii) *Sale of A's PRS interest.* Immediately before the sale of the PRS interest to D, A's basis in the PRS interest is reduced (to $3,000,000) by the § 1.752–7 liability reduction, *i.e.*, the lesser of the excess of A's basis in the PRS interest ($4,000,000) over the adjusted value of that interest ($3,000,000), $1,000,000, or the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000. Therefore, A neither realizes nor recognizes any gain or loss on the sale of the PRS interest to D. D's basis in the PRS interest is $3,000,000. D's share of the adjusted basis of partnership property, as determined under § 1.743–1(d), equals D's interest in the partnership's previously taxed capital of $2,000,000 (the amount of cash that D would receive on a liquidation of the partnership, $3,000,000, increased by the amount of tax loss that would be allocated to D in the hypothetical transaction, $0, and reduced by the amount of tax gain that would be allocated to D in the hypothetical transaction, $1,000,000). Therefore, the positive basis adjustment under section 743(b) is $1,000,000.

Computation of §1.752-7 Liability Reduction (in millions)

1. Basis of A's PRS interest	$4
2. Less adjusted value of A's PRS interest	(3)
3. Difference	$1
4. Remaining built-in loss from §1.752-7 liability	2
5. §1.752-7 liability reduction (lesser of 3 or 4)	$1

Gain/Loss on Sale of A's PRS Interest (in millions)

1. Amount realized on sale	$3
2. Less basis of PRS interest	
Original	4
§1.752-7 liability reduction	1
Difference	($3)
3. Gain/Loss	0

(iii) *Satisfaction of § 1.752–7 liability.* Neither PRS nor any of its partners is entitled to a deduction, loss, or capital expense upon the satisfaction of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). PRS is entitled to a deduction, however, for the amount by which the cost of satisfying the § 1.752–7 liability exceeds the remaining built-in loss associated with the § 1.752–7 liability. Therefore, in 2007, PRS may deduct $1,000,000 (cost to satisfy the § 1.752–7 liability, $3,000,000, less the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000). If PRS notifies A of the satisfaction of the § 1.752–7 liability, then A is entitled to an ordinary deduction in 2007 of $1,000,000 (the § 1.752–7 liability reduction).

PRS's Deduction on Satisfaction of Liability (in millions)

1. Amount paid by PRS to satisfy §1.752-7 liability	$3
2. Remaining built-in loss for §1.752-7 liability	(2)
3. Difference	$1

Example 2. The facts are the same as in *Example 1* except that, at the time of A's sale of the PRS interest to D, PRS has a nonrecourse liability of $4,000,000, of which A's share is $1,000,000. A's basis in PRS is $5,000,000. At the time of the sale of the PRS interest to D, the adjusted value of A's interest is $4,000,000 (the fair market value of the interest ($3,000,000), increased by A's share of partnership liabilities ($1,000,000)). The difference between the basis of A's interest ($5,000,000) and the adjusted value of that interest ($4,000,000) is $1,000,000. Therefore, the § 1.752–7 liability reduction is $1,000,000 (the lesser of this difference or the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000). Immediately before the sale of the PRS interest to D, A's basis is reduced from $5,000,000 to $4,0000,000. A's amount realized on the sale of the PRS interest to D is $4,000,000 ($3,000,000 paid by D, increased under section 752(d) by A's share of partnership liabilities, or $1,000,000). Therefore, A neither realizes nor recognizes any gain or loss on the sale. D's basis in the PRS interest is $4,000,000. Because D's share of the adjusted basis of partnership property is $3,000,000 (D's share of the partnership's previously taxed capital, $2,000,000, plus D's share of partnership liabilities, $1,000,000), the basis adjustment under section 743(b) is $1,000,000.

PRS Balance Sheet (in millions)

Assets			Liabilities/Equity		
Value	Basis		Value	Basis	
$ 5	$ 4	Property 1			
$13	$13	Cash			
			$4	-	Nonrecourse Debt
			$2	-	§1.752-7 Liability
					Partner's Equity:
			$3	$5	A
			$3	$4	B
			$6	$8	C

Computation of §1.752-7 Liability Reduction (in millions)

1. Basis of A's PRS interest	$5
2. Less adjusted value of A's PRS interest	
Value of PRS interest	3
A's share of nonrecourse debt	1
Total	(4)
3. Difference between 1 and 2	1
4. Remaining built-in loss from §1.752-7 liability	2
5. §1.752-7 liability reduction (lesser of 3 or 4)	$1

Gain/Loss on Sale of A's PRS Interest (in millions)

1. Amount realized on sale	
Value of PRS interest	$3
A's share of nonrecourse debt	1
Total	$4
2. Less basis of PRS interest	
Original	$5
§1.752-7 liability reduction	$1
Difference	($4)
3. Gain/Loss	0

Example 3. The facts are the same as in *Example 1,* except that the satisfaction of the § 1.752–7 liability would have given rise to a capital expense to A or PRS. Neither PRS nor any of its partners are entitled to a capital expense upon the satisfaction of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). PRS may, however, increase the basis of appropriate partnership assets by the amount by which the cost of satisfying the § 1.752–7 liability exceeds the remaining built-in loss associated with the § 1.752–7 liability. Therefore, in 2007, PRS may capitalize $1,000,000 (cost to satisfy the § 1.752–7 liability, $3,000,000, less the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000) to the appropriate partnership assets. If A is notified by PRS that the § 1.752–7 liability has been satisfied, then A is entitled to a capital loss in 2007 as provided in paragraph (e)(1) of this section, the year of the satisfaction of the § 1.752–7 liability.

(3) *Exception for nonrecognition transactions*—(i) *In general.* Paragraph (e)(1) of this section does not apply where a § 1.752–7 liability partner transfers all or part of the partner's partnership interest in a transaction in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in the partnership interest. In addition, paragraph (e)(1) of this section does not apply to a distribution of an interest in the partnership (lower-tier partnership) that has assumed the § 1.752–7 liability by a partnership that is the § 1.752–7 liability partner (upper-tier partnership) if the partners of the upper-tier partnership that were § 1.752–7 liability partners with respect to the lower-tier partnership prior to the distribution continue to be § 1.752–7 liability partners with respect to the lower-tier partnership after the distribution. See paragraphs (b)(4)(ii) and (j)(3) of this section for rules on the application of this section to partners of the § 1.752–7 liability partner.

(ii) *Examples.* The following examples illustrate the provisions of this paragraph (e)(3):

Example 1. Transfer of partnership interest to lower-tier partnership. (i) *Facts.* In 2004, X contributes undeveloped land with a value and basis of $2,000,000 and subject to environmental liabilities of $1,500,000 to partnership LTP in exchange for a 50% interest in LTP. LTP develops the land as a landfill. In 2005, in a transaction governed by section 721(a), X contributes the LTP interest to UTP in exchange for a 50% interest in UTP. In 2008, X sells the UTP interest to A for $500,000. At the time of the sale, X's basis in UTP is $2,000,000, the remaining built-in loss associated with the environmental liability is $1,500,000, and the gross value of UTP's assets is $2,500,000. The environmental liabilities were not assumed by LTP as part of a contribution by X to LTP of a trade or business with which the liabilities were associated. (See paragraph (b)(10)(ii), *Example 1* of this section.)

(ii) *Analysis.* Because UTP's basis in the LTP interest is determined by reference to X's basis in the LTP interest, X's contribution of the LTP interest to UTP is exempted from the rules of paragraph (e)(1) of this section. Under paragraph (j)(1) of this section, X's contribution of the LTP interest to UTP is treated as a contribution of X's share of the assets of LTP and UTP's assumption of X's share of the LTP liabilities (including § 1.752–7 liabilities). Therefore, X's transfer of the LTP interest to UTP is a § 1.752–7 liability transfer. The § 1.752–7 liabilities deemed transferred by X to UTP are not associated with a trade or business transferred to UTP for purposes of paragraph (d)(2)(i)(A) of this section, because they were not associated with a trade or business transferred by X to LTP as part of the original § 1.752–7 liability transfer. See paragraph (j)(2) of this section. Because none of the exceptions described in paragraph (d)(2) of this section apply to X's taxable sale of the UTP interest to A in 2008, paragraph (e)(1) of this section applies to that sale.

Example 2. Transfer of partnership interest to corporation. The facts are the same as in *Example 1,* except that, rather than transferring the LTP interest to UTP in 2005, X contributes the LTP interest to Corporation Y in an exchange to which section 351 applies. Because Corporation Y's basis in the LTP interest is determined by reference to X's basis in that interest, X's contribution of the LTP interest is exempted from the rules of paragraph (e)(1) of this section. But see section 358(h) and § 1.358–7 for appropriate basis adjustments.

Example 3. Partnership merger. (i) *Facts.* In 2004, A, B, C, and D form equal partnership

PRS1. A contributes Blackacre with a value and basis of $2,000,000 to PRS1 and PRS1 assumes from A $1,500,000 of pension liabilities unrelated to Blackacre. B, C, and D each contribute $500,000 cash to PRS1. PRS1 uses the cash contributed by B, C, and D ($1,500,000) to purchase Whiteacre. In 2006, PRS1 merges into PRS2 in an assets-over merger under § 1.708–1(c)(3). Assume that, under § 1.708–1(c), PRS2 is the surviving partnership and PRS1 is the terminating partnership. At the time of the merger, the value of Blackacre is still $2,000,000, the remaining built-in loss with respect to the pension liabilities is still $1,500,000, but the value of Whiteacre has declined to $500,000.

(ii) *Deemed assumption by PRS2 of PRS1 liabilities.* Under § 1.708–1(c)(3), the merger is treated as a contribution of the assets and liabilities of PRS1 to PRS2, followed by a distribution of the PRS2 interests by PRS1 in liquidation of PRS1. Because PRS2 assumes a § 1.752–7 liability (the pension liabilities) of PRS1, PRS1 is a § 1.752–7 liability partner of PRS2. Under paragraph (b)(5)(ii)(A) of this section, A is also § 1.752–7 liability partner of PRS2 to the extent of the remaining $1,500,000 built-in loss associated with the pension liabilities. B, C, and D are not § 1.752–7 liability partners with respect to PRS1. If the amount of the pension liabilities had increased between the date of PRS1's assumption of those liabilities from A and the date of the merger of PRS1 into PRS2, then B, C, and D would be § 1.752–7 liability partners with respect to PRS2 to the extent of their respective shares of that increase. See paragraph (b)(5)(ii) of this section.

(iii) *Deemed distribution of PRS2 interests.* Paragraph (e)(1) does not apply to PRS1's deemed distribution of the PRS2 interests, because, under paragraph (b)(5)(ii)(B) of this section, all of the partners that were § 1.752–7 liability partners with respect to PRS2 before the distribution, i.e., A, continue to be § 1.752–7 liability partners after the distribution. After the distribution, A's share of the pension liabilities now held by PRS2 will continue to be $1,500,000.

Example 4. Partnership division; no shifting of § 1.752–7 liability. The facts are the same as in *Example 3*, except that PRS1 does not merge with PRS2, but instead contributes Blackacre to PRS2 in exchange for PRS2 interests and the assumption by PRS2 of the pension liabilities. Immediately thereafter, PRS1 distributes the PRS2 interests to A and B in liquidation of their interests in PRS1. The analysis is the same as in *Example 3*. After the assumption of the pension liabilities by PRS2, A is a § 1.752–7 liability partner with respect to PRS2. After the distribution of a PRS2 interest to A, A continues to be a § 1.752–7 liability partner with respect to PRS2, and the amount of A's built-in loss with respect to the § 1.752–7 liabilities continues to be $1,500,000. Therefore, paragraph (e)(1) of this section does not apply to the distribution of the PRS2 interests to A and B.

Example 5. Partnership division; shifting of § 1.752–7 liability. The facts are the same as in *Example 4*, except that PRS1 distributes the PRS2 interests not to A and B, but to C and D, in liquidation of their interests in PRS1. After this distribution, A does not continue to be a § 1.752–7 liability partner of PRS2, because A no longer has an interest in PRS2. Therefore, paragraph (e)(1) of this section applies to the distribution of the PRS2 interests to C and D.

(f) *Distribution in liquidation of § 1.752–7 liability partner's partnership interest*—(1) *In general.* Except as provided in paragraphs (d)(2) and (i) of this section, immediately before a distribution in liquidation of a § 1.752–7 liability partner's partnership interest, the § 1.752–7 liability partner's basis in the partnership interest is reduced by the § 1.752–7 liability reduction (as defined in paragraph (b)(7) of this section). This rule applies before section 737. No deduction, loss, or capital expense is allowed to the partnership on the satisfaction of the § 1.752–7 liability (within the meaning of paragraph (b)(8) of this section) to the extent of the remaining built-in loss associated with the § 1.752–7 liability (as defined in paragraph (b)(6) of this section). For purposes of section 705(a)(2)(B) and § 1.704–1(b)(2)(ii)(*b*) only, the remaining built-in loss associated with the § 1.752–7 liability is not treated as a nondeductible, noncapital expenditure of the partnership. Therefore, the remaining partners' capital accounts and bases in their partnership interests are not reduced by the remaining built-in loss associated with the § 1.752–7 liability. If the partnership (or any successor) notifies the § 1.752–7 liability partner of the satisfaction of the § 1.752–7 liability, then the § 1.752–7 liability partner is entitled to a loss or deduction. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount that the partnership would, but for this section, take into account on the partial satisfaction of the § 1.752–7 liability (but not, in total, more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount that the partnership would, but for this section, take into account on satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the liability. To the extent that the § 1.752–7 liability reduction exceeds the amount that the partnership would, but for this section, take into account on satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

(2) *Example.* The following example illustrates the provision of this paragraph (f):

Example. (i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1 with a fair market value and basis of $5,000,000 subject to a § 1.752–7 liability of $2,000,000 for a 25% interest in PRS. B contributes $3,000,000 cash for a 25% interest in PRS, and C contributes $6,000,000 cash for a 50% interest in PRS. In 2012, when PRS has a section 754 election in effect, PRS distributes Property 2, which has a basis and fair market value of $3,000,000, to A in liquidation of A's PRS interest. At the time of the distribution, the fair market value of A's PRS interest is still $3,000,000, the basis of that interest is still $5,000,000, and the remaining built-in loss associated with the § 1.752–7 liability is still $2,000,000. Assume that none of the exceptions of paragraph (d)(2) of this section apply to the distribution and that the satisfaction of the § 1.752–7 liability would have given rise to a deductible expense to A. In 2013, PRS pays $1,000,000 to satisfy the entire § 1.752–7 liability.

PRS Balance Sheet (in millions)

Assets			Liabilities/Equity		
Value	Basis		Value	Basis	
$5	$5	Property 1			
$9	$9	Cash			
			$2	-	§1.752-7 Liability
					Partner's Equity:
			$3	$5	A
			$3	$3	B
			$6	$6	C

(ii) *Liquidation of A's PRS interest.* Immediately before the distribution of Property 2 to A, A's basis in the PRS interest is reduced (to $3,000,000) by the § 1.752–7 liability reduction, *i.e.*, the lesser of the excess of A's basis in the PRS interest ($5,000,000) over the adjusted value ($3,000,000) of that interest ($2,000,000) or the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). Therefore, A's basis in Property 2 under section 732(b) is $3,000,000. Because this is the same as the partnership's basis in Property 2 immediately before the distribution, the partnership's basis adjustment under section 734(b) is $0.

Computation of §1.752-7 Liability Reduction (in millions)

1. Basis of A's PRS interest	$5
2. Less adjusted value of A's PRS interest	(3)
3. Difference	$2
4. Remaining built-in loss from §1.752-7 liability	2
5. §1.752-7 liability reduction (lesser of 3 or 4)	$2

(iii) *Satisfaction of § 1.752–7 liability.* PRS is not entitled to a deduction, loss, or capital expense on the satisfaction of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). Because this amount exceeds the amount paid by PRS to satisfy the § 1.752–7 liability ($1,000,000), PRS is not entitled to any deduction for the § 1.752–7 liability in 2013. If, however, PRS notifies A of the satisfaction of the § 1.752–7 liability, A is entitled to an ordinary deduction in 2013 of $1,000,000 (the amount paid in satisfaction of the § 1.752–7 liability) and a capital loss of $1,000,000 (the remaining § 1.752–7 liability reduction).

PRS's Deduction on Satisfaction of Liability (in millions)

Amount paid by PRS to satisfy §1.752-7 liability	$1
Remaining built-in loss for §1.752-7 liability	(2)
Difference (but not below zero)	$0

(g) *Assumption of § 1.752–7 liability by a partner other than § 1.752–7 liability partner*—(1) *In general.* If this paragraph (g) applies, section 704(c)(1)(B) does not apply to an assumption of a § 1.752–7 liability from a partnership by a partner other than the § 1.752–7 liability partner. The rules of paragraph (g)(2) of this section apply only if the § 1.752–7 liability partner is a partner in the partnership at the time of the assumption of the § 1.752–7 liability from the partnership. The rules of paragraphs (g)(3) and (4) of this section apply to any assumption of the § 1.752–7 liability by a partner other than the § 1.752–7 liability partner, whether or not the § 1.752–7 liability partner is a partner in the partnership at the time of the assumption from the partnership.

(2) *Consequences to § 1.752–7 liability partner.* If, at the time of an assumption of a § 1.752–7 liability from a partnership by a partner other than the § 1.752–7 liability partner, the § 1.752–7 liability partner remains a partner in the partnership, then the § 1.752–7 liability partner's basis in the partnership interest is reduced by the § 1.752–7 liability reduction (as defined in paragraph (b)(7) of this section). If the assuming partner (or any successor) notifies the § 1.752–7 liability partner of the satisfaction of the § 1.752–7 liability (within the meaning of paragraph (b)(8) of this section), then the § 1.752–7 liability partner is entitled to a deduction or loss. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount that the assuming partner would, but for this section, take into account on the satisfaction of the § 1.752–7 liability (but not, in total,

more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount that the assuming partner would, but for this section, take into account on the satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the liability. To the extent that the § 1.752–7 liability reduction exceeds the amount that the assuming partner would, but for this section, take into account on the satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

(3) *Consequences to partnership.* Immediately after the assumption of the § 1.752–7 liability from the partnership by a partner other than the § 1.752–7 liability partner, the partnership must reduce the basis of partnership assets by the remaining built-in loss associated with the § 1.752–7 liability (as defined in paragraph (b)(6) of this section). The reduction in the basis of partnership assets must be allocated among partnership assets as if that adjustment were a basis adjustment under section 734(b).

(4) *Consequences to assuming partner.* No deduction, loss, or capital expense is allowed to an assuming partner (other than the § 1.752–7 liability partner) on the satisfaction of the § 1.752–7 liability assumed from a partnership to the extent of the remaining built-in loss associated with the § 1.752–7 liability. Instead, upon the satisfaction of the § 1.752–7 liability, the assuming partner must adjust the basis of the partnership interest, any assets (other than cash, accounts receivable, or inventory) distributed by the partnership to the partner, or gain or loss on the disposition of the partnership interest, as the case may be. These adjustments are determined as if the assuming partner's basis in the partnership interest at the time of the assumption were increased by the lesser of the amount paid (or to be paid) to satisfy the § 1.752–7 liability or the remaining built-in loss associated with the § 1.752–7 liability. However, the assuming partner cannot take into account any adjustments to depreciable basis, reduction in gain, or increase in loss until the satisfaction of the § 1.752–7 liability.

(5) *Example.* The following example illustrates the provisions of this paragraph (g):

Example. (i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1, a nondepreciable capital asset with a fair market value and basis of $5,000,000, in exchange for a 25% interest in PRS and assumption by PRS of a § 1.752–7 liability of $2,000,000. B contributes $3,000,000 cash for a 25% interest in PRS, and C contributes $6,000,000 cash for a 50% interest in PRS. PRS uses the cash contributed to purchase Property 2. In 2007, PRS distributes Property 1, subject to the § 1.752–7 liability to B in liquidation of B's interest in PRS. At the time of the distribution, A's interest in PRS still has a value of $3,000,000 and a basis of $5,000,000, and B's interest in PRS still has a value and basis of $3,000,000. Also at that time, Property 1 still has a value and basis of $5,000,000, Property 2 still has a value and basis of $9,000,000, and the remaining built-in loss associated with the § 1.752–7 liability still is $2,000,000. Assume that none of the exceptions of paragraph (d)(2)(i) of this section apply to the assumption of the § 1.752–7 liability by B and that the satisfaction of the § 1.752–7 liability by A would have given rise to a deductible expense to A. In 2010, B pays $1,000,000 to satisfy the entire § 1.752–7 liability. At that time, B still owns Property 1, which has a basis of $3,000,000.

PRS Balance Sheet (in millions)

Assets			Liabilities/Equity		
Value	Basis		Value	Basis	
$5	$5	Property 1			
$9	$9	Property 2			
			$2	-	§1.752-7 Liability
					Partner's Equity:
			$3	$5	A
			$3	$3	B
			$6	$6	C

(ii) *Assumption of § 1.752–7 liability by B.* Section 704(c)(1)(B) does not apply to the assumption of the § 1.752–7 liability by B. Instead, A's basis in the PRS interest is reduced (to $3,000,000) by the § 1.752–7 liability reduction, *i.e.*, the lesser of the excess of A's basis in the PRS interest ($5,000,000) over the adjusted value ($3,000,000) of that interest ($2,000,000), or the remaining built-in loss associated with the § 1.752–7 liability as of the time of the assumption ($2,000,000). PRS's basis in Property 2 is reduced (to $7,000,000) by the $2,000,000 remaining built-in loss associated with the § 1.752–7 liability. B's basis in Property 1 under section 732(b) is $3,000,000 (B's basis in the PRS interest). This is $2,000,000 less than PRS's basis in Property 1 before the distribution of Property 1 to B. If PRS has a section 754 election in effect for 2007, PRS may increase the basis of Property 2 under section 734(b) by $2,000,000.

§ 1.752-7 Liability Reduction (in millions)	
1. Basis of A's PRS interest	$5
2. Less adjusted value of A's PRS interest	(3)
3. Difference	$2
4. Remaining built-in loss from §1.752-7 liability	2
5. §1.752-7 liability reduction (lesser of 3 or 4)	$2

A's Basis in PRS after Assumption by B (in millions)	
1. Basis before assumption	$5
2. Less §1.752-7 liability reduction	(2)
3. Basis after assumption	$3

PRS's Basis in Property 2 after Assumption by B (in millions)	
1. Basis before assumption	$9
2. Less remaining built-in loss from §1.752-7 liability	(2)
3. Plus section 734(b) adjustment (if partnership has a section 754 election)	2
4. Basis after assumption	$9

(iii) *Satisfaction of § 1.752–7 liability.* B is not entitled to a deduction on the satisfaction of the § 1.752–7 liability in 2010 to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). As this amount exceeds the amount paid by B to satisfy the § 1.752–7 liability, B is not entitled to any deduction on the satisfaction of the § 1.752–7 liability in 2010. B may, however, increase the basis of Property 1 by the lesser of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000) or the amount paid to satisfy the § 1.752–7 liability ($1,000,000). Therefore, B's basis in Property 1 is increased to $4,000,000. If B notifies A of the satisfaction of the § 1.752–7 liability, then A is entitled to an ordinary deduction in 2010 of $1,000,000 (the amount paid in satisfaction of the § 1.752–7 liability) and a capital loss of $1,000,000 (the remaining § 1.752–7 liability reduction).

B's Basis in Property 1 after Satisfaction of Liability (in millions)	
1. Basis in Property 1 after distribution	$3
2. Plus lesser of remaining built-in loss ($2) or amount paid to satisfy liability ($1)	1
4. Basis in Property 1 after satisfaction of liability	$4

(h) *Notification by the partnership (or successor) of the satisfaction of the § 1.752–7 liability.* For purposes of paragraphs (e), (f), and (g) of this section, notification by the partnership (or successor) of the satisfaction of the § 1.752–7 liability must be attached to the § 1.752–7 liability partner's return (whether an original or an amended return) for the year in which the loss is being claimed and must include—

(1) The amount paid in satisfaction of the § 1.752–7 liability, and whether the amounts paid were in partial or complete satisfaction of the § 1.752–7 liability;

(2) The name and address of the person satisfying the § 1.752–7 liability;

(3) The date of the payment on the § 1.752–7 liability; and

(4) The character of the loss to the § 1.752–7 liability partner with respect to the § 1.752–7 liability.

(i) *Special rule for amounts that are capitalized prior to the occurrence of an event described in paragraphs (e), (f), or (g)*—(1) *In general.* If all or a portion of a § 1.752–7 liability is properly capitalized (capitalized basis) prior to an event described in paragraph (e), (f), or (g) of this section, then, before an event described in paragraph (e), (f), or (g) of this section, the partnership may take the capitalized basis into account for purposes of computing cost recovery and gain or loss on the sale of the asset to which the basis has been capitalized (and for any other purpose for which the basis of the asset is relevant), but after an event described in paragraph (e), (f), or (g) of this section, the partnership may not take any remaining capitalized basis into account for tax purposes.

(2) *Example.* The following example illustrates the provisions of this paragraph (i):

Example. (i) *Facts.* In 2004, A and B form partnership PRS. A contributes Property 1, a nondepreciable capital asset, with a fair market value and basis of 5,000,000, in exchange for a 25% interest in PRS and an assumption by PRS of a § 1.752–7 liability of $2,000,000. B contributes $9,000,000 in cash in exchange for a 75% interest in PRS. PRS uses $7,000,000 of the cash to purchase Property 2, also a nondepreciable capital asset. In 2007, when PRS's assets have not changed, PRS satisfies the § 1.752–7 liability by paying $2,000,000. Assume that PRS is required to capitalize the cost of satisfying the § 1.752–7 liability. In 2008, A sells his interest in PRS to C for $3,000,000. At the time of the sale, the basis of A's interest is still $5,000,000.

(ii) *Analysis.* On the sale of A's interest to C, A realizes a loss of $2,000,000 on the sale of the PRS interest (the excess of $5,000,000, the basis of the partnership interest, over $3,000,000, the amount realized on sale). The remaining built-in loss associated with the § 1.752–7 liability at that time is zero because all of the § 1.752–7 liability as of the time of the assumption of the § 1.752–7 liability by the partnership was capitalized by the partnership. The partnership may not take any remaining capitalized basis into account for tax purposes.

Gain/Loss on Sale of A's PRS Interest (in millions)

1. Amount realized on sale	$3
2. Less basis of PRS interest	
Original Basis	$5
§1.752-7 liability reduction	$0
Difference	($5)
3. Gain/Loss	($2)

(iii) *Partial Satisfaction.* Assume that, prior to the sale of A's interest in PRS to C, PRS had paid $1,500,000 to satisfy a portion of the § 1.752–7 liability. Therefore, immediately before the sale of the PRS interest to C, A's basis in the PRS interest would be reduced (to $4,500,000) by the $500,000 remaining built-in loss associated with the § 1.752–7 liability ($2,000,000 less the 1,500,000 portion capitalized by the partnership as that time). On the sale of the PRS interest, A realizes a loss of $1,500,000 (the excess of $4,500,000, the basis of the PRS interest, over $3,000,000, the amount realized on the sale). Neither PRS nor any of its partners is entitled to a deduction, loss, or capital expense upon the satisfaction of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($500,000). If PRS notifies A of the satisfaction of the remaining portion of the § 1.752–7 liability, then A is entitled to a deduction or loss of $500,000 (the remaining § 1.752–7 liability reduction). The partnership may not take any remaining capitalized basis into account for tax purposes.

Gain/Loss on Sale of A's PRS Interest (in millions)

1. Amount realized on sale	$3
2. Less basis of PRS interest	
Original Basis	$5
§1.752-7 liability reduction	($0.5)
Difference	($4.5)
3. Gain/Loss	($1.5)

(j) *Tiered partnerships*—(1) *Look-through treatment.* For purposes of this section, a contribution by a partner of an interest in a partnership (lower-tier partnership) to another partnership (upper-tier partnership) is treated as a contribution by the partner of the partner's share of each of the lower-tier partnership's assets and an assumption by the upper-tier partnership of the partner's share of the lower-tier partnership's liabilities (including § 1.752–7 liabilities). See paragraph (e)(3)(ii) *Example 1* of this section. In addition, a partnership is treated as having its share of any § 1.752–7 liabilities of the partnerships in which it has an interest.

(2) *Trade or business exception.* If a partnership (upper-tier partnership) assumes a § 1.752–7 liability of a partner, and, subsequently, another partnership (lower-tier partnership) assumes that § 1.752–7 liability from the upper-tier partnership, then the § 1.752–7 liability is treated as associated only with any trade or business contributed to the upper-tier partnership by the § 1.752–7 liability partner. The same rule applies where a partnership assumes a § 1.752–7 liability of a partner, and, subsequently, the § 1.752–7 liability partner transfers that partnership interest to another partnership. See paragraph (e)(3)(ii) *Example 1* of this section.

(3) *Partnership as a § 1.752–7 liability partner.* If a transaction described in paragraph (e), (f), or (g) of this section occurs with respect to a partnership (upper-tier partnership) that is a § 1.752–7 liability partner of another partnership (lower-tier partnership), then such transaction will also be treated as a transaction described in paragraph (e), (f), or (g) of this section, as appropriate, with respect to the partners of the upper-tier partnership, regardless of whether the upper-tier partnership assumed the § 1.752–7 liability from those partners. (See paragraph (b)(5) of this section for rules relating to the treatment of transactions by the partners of the upper-tier partnership). In such a case, each partner's share of the § 1.752–7 liability reduction in the upper-tier partnership is equal to that partner's share of the § 1.752–7 liability. The partners of the upper-tier partnership at the time of the transaction described in paragraph (e), (f), or (g) of this section, and not the upper-tier partnership, are entitled to the deduction or loss on the satisfaction of the § 1.752–7 liability. Similar principles apply where the upper-tier

partnership is itself owned by one or a series of partnerships. This paragraph does not apply to the extent that § 1.752–7(j)(4) applied to the assumption of the § 1.752–7 liability by the lower-tier partnership.

(4) *Transfer of § 1.752–7 liability by partnership to another partnership or corporation after a transaction described in paragraph (e), (f), or (g).*— (i) *In general.* If, after a transaction described in paragraph (e), (f), or (g) of this section with respect to a § 1.752–7 liability assumed by a partnership (the upper-tier partnership), another partnership or a corporation assumes the § 1.752–7 liability from the upper-tier partnership (or the assuming partner) in a transaction in which the basis of property is determined, in whole or in part, by reference to the basis of the property in the hands of the upper-tier partnership (or assuming partner), then—

(A) The upper-tier partnership (or assuming partner) must reduce its basis in any corporate stock or partnership interest received by the remaining built-in loss associated with the § 1.752–7 liability, at the time of the transaction described in paragraph (e), (f), or (g) of this section (but the partners of the upper-tier partnership do not reduce their bases or capital accounts in the upper-tier partnership); and

(B) No deduction, loss, or capital expense is allowed to the assuming partnership or corporation on the satisfaction of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability.

(ii) *Subsequent transfers.* Similar rules apply to subsequent assumptions of the § 1.752–7 liability in transactions in which the basis of property is determined, in whole or in part, by reference to the basis of the property in the hands of the transferor. If, subsequent to an assumption of the § 1.752–7 liability by a partnership in a transaction to which paragraph (j)(4)(i) of this section applies, the § 1.752–7 liability is assumed from the partnership by a partner other than the partner from whom the partnership assumed the § 1.752–7 liability, then the rules of paragraph (g) of this section apply.

(5) *Example.* The following example illustrates the provisions of paragraphs (j)(3) and (4) of this section:

Example. (i) *Assumption of § 1.752–7 liability by UTP and transfer of § 1.752–7 liability partner's interest in UTP.* In 2004, A, B, and C form partnership UTP. A contributes Property 1 with a fair market value and basis of $5,000,000 subject to a § 1.752–7 liability of $2,000,000 in exchange for a 25% interest in UTP. B contributes $3,000,000 cash in exchange for a 25% interest in UTP, and C contributes $6,000,000 cash in exchange for a 50% interest in UTP. UTP invests the $9,000,000 cash in Property 2. In 2006, A sells A's interest in UTP to D for $3,000,000. At the time of the sale, the basis of A's UTP interest is $5,000,000, the remaining built-in loss associated with the § 1.752–7 liability is $2,000,000, and UTP has no liabilities other than the § 1.752–7 liabilities assumed from A. Assume that none of the exceptions of paragraph (d)(2) of this section apply and that the satisfaction of the § 1.752–7 liability would give rise to a deductible expense to A and to UTP. Under paragraph (e) of this section, immediately before the sale of the UTP interest to D, A's basis in UTP is reduced to $3,000,000 by the $2,000,000 § 1.752–7 liability reduction. Therefore, A neither realizes nor recognizes any gain or loss on the sale of the UTP interest to D. D's basis in the UTP interest is $3,000,000.

UTP Balance Sheet Prior to A's Sale (in millions)

Assets			Liabilities/Equity		
Value	Basis		Value	Basis	
$5	$5	Property 1			
$9	$9	Property 2			
			$2		§1.752-7 Liability
					Partner's Equity:
			$3	$5	A (25%)
			$3	$3	B (25%)
			$6	$6	C (50%)
			$12	$14	Total Equity

Gain/Loss on Sale of A's PRS Interest to D (in millions)

1.	Amount realized on sale	$3
2.	Less basis of PRS interest	
	Original	$5
	§1.752-7 liability reduction	($2)
	Difference	($3)
3.	Gain/Loss	$0

(ii) *Assumption of § 1.752–7 liability by LTP from UTP.* In 2008, at a time when the estimated amount of the § 1.752–7 liability has increased to $3,500,000, UTP contributes Property 1 and Property 2, subject to the § 1.752–7 liability, to LTP in exchange for a 50% interest in LTP. At the time of the contribution, Property 1 still has a value and basis of $5,000,000 and Property 2 still has a value and basis of $9,000,000. UTP's basis in LTP under section 722 is $14,000,000. Under paragraph (j)(4)(i) of this section, UTP must reduce its basis in LTP by the $2,000,000 remaining built-in loss associated with the § 1.752–7 liability (as of the time of the sale of the UTP interest by A). The partners in UTP are not required to reduce their bases in UTP by this amount. UTP is a § 1.752–7 liability partner of LTP with respect to the entire $3,500,000 § 1.752–7 liability assumed by LTP. However, as A is no longer a partner of UTP, none of the partners of UTP (as of the time of the assumption of the § 1.752–7 liability by LTP)

are § 1.752–7 liability partners of LTP with respect to the $2,000,000 remaining built-in loss associated with the § 1.752–7 liability (as of the time of the sale of the UTP interest by A). The UTP partners (as of the time of the assumption of the § 1.752–7 liability by LTP) are § 1.752–7 liability partners of LTP with respect to the $1,500,000 increase in the amount of the § 1.752–7 liability of UTP since the assumption of that § 1.752–7 liability by UTP from A.

UTP Balance Sheet Immediately Before Contribution to LTP
(in millions)

Assets		Liabilities/Equity		
Value	Basis	Value	Basis	
$5	$5			Property 1
$9	$9			Property 2
				§1.752-7 Liability
		$2		Assumed from A
		$1.5		Additional
		$3.5		Total
				Partner's Equity:
		$2.625	$3	D (25%)
		$2.625	$3	B (25%)
		$5.25	$6	C (50%)
		$10.5	$12	Total Equity

UTP's Basis in LTP Immediately After Contribution (in millions)

1. Basis in assets	$14
2. Less remaining built-in loss at time of A's sale	($ 2)
3. UTP's basis in LTP	$12

(iii) *Sale by UTP of LTP interest.* In 2010, UTP sells its interest in LTP to E for $10,500,000. At the time of the sale, the LTP interest still has a value of $10,500,000 and a basis of $12,000,000, and the remaining built-in loss associated with the § 1.752–7 liability is $3,500,000. Under paragraph (e) of this section, immediately before the sale, UTP must reduce its basis in the LTP interest by the § 1.752–7 liability reduction. Under paragraph (a)(4) of this section, the remaining built-in loss associated with the § 1.752–7 liability is $1,500,000 (remaining built-in loss associated with the § 1.752–7 liability, $3,500,000, reduced by the amount of the § 1.752–7 liability taken into account under paragraph (j)(4) of this section, $2,000,000). The difference between the basis of the LTP interest held by UTP ($12,000,000) and the adjusted value of that interest ($10,500,000) is also $1,500,000. Therefore, the § 1.752–7 liability reduction is $1,500,000 and UTP's basis in the LTP interest must be reduced to $10,500,000. In addition, UTP's partners must reduce their bases in their UTP interests by their proportionate shares of the § 1.752–7 liability reduction. Thus, the basis of each of B's and D's interest in UTP must be reduced by $375,000 and the basis of C's interest in UTP must be reduced by $750,000. In 2011, D sells the UTP interest to F.

Computation of §1.752-7 Liability Reduction (in millions)

1. Basis of UTP's LTP interest	$12
2. Less adjusted value of UTP's LTP interest	($10.5)
3. Difference between 1 and 2	$ 1.5
4. Remaining built-in loss from §1.752-7 liability	$ 1.5
5. §1.752-7 liability reduction (lesser of 3 or 4)	$ 1.5

Gain/Loss on Sale of UTP's PRS Interest to E (in millions)

1. Amount realized on sale	$10.5
2. Less basis of PRS interest	
Original	$12
§1.752-7 liability reduction	($ 1.5)
Difference	($10.5)
3. Gain/Loss	$ 0

Partner's Bases in UTP Interests after Sale of LTP Interest (in millions)

	B	C	D
Basis prior to sale	$3	$6	$3
Share of §1.752-7 liability Reduction	($0.375)	($0.75)	($0.375)
Basis after sale	$2.625	$5.25	$2.625

(iv) *Deduction, expense, or loss associated with the § 1.752–7 liability by LTP.* In 2012, LTP pays $3,500,000 to satisfy the § 1.752–7 liability. Under paragraphs (e) and (j)(4) of this section, LTP is not entitled to any deduction with respect to the § 1.752–7 liability. Under paragraph (j)(3) of this section, UTP also is not entitled to any deduction with respect to the § 1.752–7 liability. If LTP notifies A, B, C and D of the satisfaction of the § 1.752–7 liability, then A is entitled to a deduction in 2012 of $2,000,000, B and D are each entitled to deductions in 2012 of $375,000, and C is entitled to a deduction in 2012 of $750,000.

(k) *Effective dates*—(1) *In general.* This section applies to § 1.752–7 liability transfers occurring on or after June 24, 2003. For assumptions occurring after October 18, 1999, and before June 24, 2003, see § 1.752–6. For § 1.752–7 liability transfers occurring on or after June 24, 2003 and before May 26, 2005, taxpayers may rely on the exception for trading and investment partnerships in paragraph (b)(8)(ii) of § 1.752.7 (2003–28 I.R.B. 46; 68 FR 37434).

(2) *Election to apply this section to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003*—(i) *In general.* A partnership may elect to apply this section to all assumptions of liabilities (including § 1.752–7 liabilities) occurring after October 18, 1999, and before June 24, 2003. Such an election is binding on the partnership and all of its partners. A partnership making such an election must apply all of the provisions of § 1.752–1 and § 1.752–7, including § 1.358–5T, § 1.358–7, § 1.704–1(b)(1)(ii) and (b)(2)(iv)(*b*), § 1.704–2(b)(3), § 1.704–3(a)(7), (a)(8)(iv), and (a)(12), § 1.704–4(d)(1)(iv), § 1.705–1(a)(8), § 1.732–2(d)(3)(iv), and § 1.737–5.

(ii) *Manner of making election.* A partnership makes an election under this paragraph (k)(2) by attaching the following statement to its timely filed return: [Insert name and employer identification number of electing partnership] elects under § 1.752–7 of the Income Tax Regulations to be subject to the rules of § 1.358–5T, § 1.358–7, § 1.704–1(b)(1)(ii) and (b)(2)(iv)(*b*), § 1.704–2(b)(3), § 1.704–3(a)(7), (a)(8)(iv), and (a)(12), § 1.704–4(d)(1)(iv), § 1.705–1(a)(8), § 1.732–2(d)(3)(iv), and § 1.737–5 with respect to all liabilities (including § 1.752–7 liabilities) assumed by the partnership after October 18, 1999 and before June 24, 2003. In the statement, the partnership must list, with respect to each liability (including each § 1.752–7 liability) assumed by the partnership after October 18, 1999 and before June 24, 2003—

(A) The name, address, and taxpayer identification number of the partner from whom the liability was assumed;

(B) The date on which the liability was assumed by the partnership;

(C) The amount of the liability as of the time of its assumption; and

(D) A description of the liability.

(iii) *Filing of amended returns.* An election under this paragraph (k)(2) will be valid only if the partnership and its partners promptly amend any returns for open taxable years that would be affected by the election.

(iv) *Time for making election.* An election under this paragraph (k)(2) must be filed with any timely filed Federal income tax return filed by the partnership on or after September 24, 2003 and on or before December 31, 2005.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 17.** The authority for part 602 continues to read as follows:

Authority: 26 U.S.C.7805.

■ **Par. 18.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.752–7	1545–1843
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 16, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–10266 Filed 5–23–05; 11:17 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–033]

RIN 1625–AA00

Safety Zone; Jones Beach Air Show, Jones Beach, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Jones Beach Air show, Jones Beach, New York. The safety zone will provide for safety of navigation of the maritime public viewing the air show and the air show practice sessions, which consists of aircraft performing aerobatics over the water area off of Jones Beach specified within this safety zone. This temporary safety zone is necessary to protect the maritime community viewing this event from the hazards inherent with an air show. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from May 27, 2005, until May 29, 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 CGD01–05–033 and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective in less than 30 days after publication. Jones Beach State Park submitted a Biological Opinion discussing environmental impacts of the air show on May 3, 2005. Due to the late completion of the Application for Approval of Marine Event by Jones Beach State Park, specifically the late submission of required environmental documentation, insufficient time remained to draft and publish an NPRM and publish the rule at least 30 days prior to its effective date.

Any delay in the effective date of this regulation would be contrary to the public interest as immediate action is necessary to close a portion of the Atlantic Ocean off of Jones Beach New York to protect the maritime community from the hazards associated with the air show.

Background and Purpose

The New York State Office of Parks, Recreation and Historic Preservation is sponsoring an air show at Jones Beach State Park. Jones Beach State Park is located on the south shore of Long Island, New York. The air show will consist of aircraft performing aerobatics in close proximity to other aircraft over a specified area of the Atlantic Ocean off of Jones Beach State Park. Several aerial groups will participate in the Air show, including the United States Air Force Thunderbirds. The entire air show will take place over the waters of the Atlantic Ocean immediately to the south of Jones Beach Island. The Coast Guard is establishing a safety zone in order to provide for the safety of the maritime community and spectators viewing the air show from the water, should an accident, namely, collision of aircraft, occur during the show. The safety zone will be in place from May 27, 2005, through May 29, 2005. Air shows will be held on May 28, 2005, and May 29, 2005. The air shows will take place from 10 a.m. to 3 p.m. each day. Practice air shows will be held on May 27, 2005, from 2 p.m. to 3 p.m. This rule will be enforced from 1 p.m. to 3:30 p.m. on Friday May 27, 2005, and 9 a.m. to 3:30 p.m. each day on May 28, 2005, and May 29, 2005, providing for sufficient time to clear the safety zone area prior to the practice sessions or shows, as well as additional time should the shows run over the scheduled period. The actual air show will be conducted within an area which is contained in and smaller than the safety zone area outlined by the coordinates indicated above. The larger safety zone area is needed to protect the boating community from the inherent hazards of air shows.

Discussion of Rule

The New York State Office of Parks, Recreation and Historic Preservation is sponsoring an air show at the Jones Beach State Park on May 28, 2005, and May 29, 2005. A practice session for this air show will be held on May 27, 2005. A safety zone is necessary to protect the maritime community from the hazards associated with an air show. This rule will be enforced from 1 p.m. to 3:30 p.m. on Friday May 27, 2005, and 9 a.m. to 3:30 p.m. each day on May 28, 2005, and May 29, 2005. The safety zone will be established by reference to geographic coordinates, consisting as follows: Beginning at a point on land located in Jones Beach State Park at approximate position 40°35′06″ N, 073°32′37″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′49″ N, 073°28′47″ W; then running south to an position in the Atlantic Ocean off of Jones Beach at approximate position 40°34′23″ N, 073°32′23″ W; then running west to approximate position 40°35′05″ N, 073°28′34″ W; then running north to the point of beginning at approximate position 40°35′06″ N, 073°32′37″ W. All coordinates are North American Datum 1983.

Any violation of the safety zone described herein, is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

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 regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: The zone will only be enforced for a temporary period each day over three days, and vessels may transit in all areas around the zone at all times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of Atlantic Ocean off of Jones Beach State Park, Wantagh, New York covered by the safety zone.

For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

The Coast Guard considered the environmental impact of this rule and

concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From May 27, 2005 to May 29, 2005 add temporary § 165.T01–033 to read as follows:

§ 165.T01–033 Safety Zone; Jones Beach Air show, Jones Beach, Wantagh, NY.

(a) *Location.* Beginning at a point on land located in Jones Beach State Park at approximate position 40°35′06″ N, 073°32′37″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′49″ N, 073°28′47″ W; then running south to an position in the Atlantic Ocean off of Jones Beach at approximate position 40°34′23″ N, 073°32′23″ W; then running west to approximate position 40°35′05″ N, 073°28′34″ W; then running north to the point of beginning at approximate position 40°35′06″ N, 073°32′37″ W. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* This rule will be enforced from 1 p.m. to 3:30 p.m. on Friday May 27, 2005 and 9 a.m. to 3:30 p.m. each day on May 28, 2005 and May 29, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

Dated: May 20, 2005.

J.J. Plunkett,

Commander, U.S. Coast Guard, , Acting Captain of the Port, Long Island Sound.

[FR Doc. 05–10592 Filed 5–23–05; 3:44 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–018]

RIN 1625–AA87

Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Captain of the Port Puget Sound will begin enforcing the Budd Inlet security zone in West Bay, Olympia, Washington on Wednesday, May 25, 2005, at 8 a.m. Pacific daylight time. The security zone provides for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. The security zone will be enforced until Friday, May 27, 2005, at 11:59 p.m. Pacific daylight time.

DATES: The Budd Inlet security zone set forth in 33 CFR 165.1321 will be enforced from Wednesday, May 25, 2005, at 8 a.m. to Friday, May 27, 2005, at 11:59 p.m. Pacific daylight time, at which time enforcement will be suspended.

FOR FURTHER INFORMATION CONTACT: LTJG J.L. Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On August 27, 2004, the Coast Guard published a final rule (69 FR 52603) establishing regulations, in 33 CFR 165.1321, for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. On December 10, 2004, the Coast Guard published a final rule (69 FR 71709), which amended 33 CFR 165.1321 by adding Budd Inlet, Olympia, WA as a permanent security zone. These security zones provide for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States. These security zones also exclude persons and vessels from the immediate vicinity of these facilities during military cargo loading and unloading operations. In addition, the regulation establishes requirements for all vessels to obtain permission of the COTP or the COTP's designated representative, including the Vessel Traffic Service (VTS) aspect of Sector Seattle to enter, move within, or exit these security zones when they are enforced. Entry into these zones is prohibited unless otherwise exempted or excluded under 33 CFR 165.1321 or unless authorized by the Captain of the Port or his designee. The Captain of the Port Puget Sound will begin enforcing the Budd Inlet security zone established by 33 CFR 165.1321 on Wednesday, May 25, 2005, at 8 a.m. Pacific daylight time. The security zone will be enforced until Friday, May 27, 2005 at 11:59 p.m. Pacific daylight time. All persons and vessels are authorized to enter, move within, and exit the security zone on or after Friday, May 27, 2005, at 11:59 p.m. Pacific daylight time unless a new notice of enforcement is issued before then.

Dated: May 20, 2005.

Danny Ellis,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–10593 Filed 5–23–05; 3:44 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2005–P–055]

RIN 0651–AB87

Changes to the Practice for Handling Patent Applications Filed Without the Appropriate Fees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: Among other changes to patent and trademark fees, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), splits the former patent application basic filing fee into a separate basic filing (or basic national) fee, search fee and examination fee, and requires an

additional fee (application size fee) for applications whose specification and drawings exceed 100 sheets of paper, during fiscal years 2005 and 2006. The United States Patent and Trademark Office is changing its practice for handling patent applications filed without the appropriate basic filing (or basic national) fee, search fee and examination fee.

DATES: *Effective Date:* July 1, 2005.

Applicability Dates: The change to 37 CFR 1.78 applies to any application that claims benefit of an application under 35 U.S.C. 111(a) in which the processing and retention fee in now former 37 CFR 1.21(l) was not paid before July 1, 2005. The change to 37 CFR 1.16(f) applies to any application under 35 U.S.C. 111(a) filed on or after July 1, 2005. The change to 37 CFR 1.492(h) applies to any international application in which the basic national fee was not paid before July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Among other changes, the Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. The Consolidated Appropriations Act also provides that the provisions of 35 U.S.C. 111(a) for payment of the fee for filing the application apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an application filed under 35 U.S.C. 111(a), and that the provisions of 35 U.S.C. 371(d) for the payment of the national fee apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an international application filed under the Patent Cooperation Treaty (PCT) and entering the national stage under 35 U.S.C. 371. *See* 35 U.S.C. 41(a)(3) and 41(d)(1)(C). Thus, the examination fee and search fee are due on filing in an application filed under 35 U.S.C. 111(a) or on commencement of the national stage in a PCT international application, but may be paid at a later time if paid within such period and under such conditions (including payment of a surcharge) as may be prescribed by the Director. *See* H.R. Rep. 108–241, at 16 (2003) (H.R. Rep. 108–241 contains an analysis and discussion of an identical provision in H.R. 1561, 108th Cong. (2004)).

In view of the revised patent fee structure during fiscal years 2005 and 2006 set forth in the Consolidated Appropriations Act, the Office is adopting the following changes in Office practice for handling patent applications filed without the appropriate fees: That is, the basic filing (or basic national) fee, search fee, and examination fee.

The Office is adopting changes to: (1) Require the surcharge under § 1.16(f) in any application filed under 35 U.S.C. 111(a) in which any of the basic filing fee, the search fee, or the examination fee are paid on a date later than the filing date of the application; and (2) require the surcharge under § 1.492(h) in any application filed under the PCT in which either of the search fee or the examination fee are paid after the date of the commencement of the national stage (§ 1.491(a)). This change is because the Consolidated Appropriations Act splits the former patent application basic filing (or basic national) fee into a separate basic filing (or basic national) fee, search fee and examination fee during fiscal years 2005 and 2006. The filing of an application which lacks either the search fee or the examination fee requires the Office to issue a notice to file the missing parts (or requirements) of the application.

The Office is also eliminating the processing and retention fee (§ 1.21(l)) practice. The processing and retention fee practice permitted an applicant to file an application without the basic filing fee (which formerly covered the cost of the initial processing of an application and part of the cost of the search and examination of an application) and pay only the processing and retention fee set forth in former § 1.21(l) in order for the application to be used as a basis for foreign filing and benefit claims under 35 U.S.C. 120 and § 1.78(a). Under the revised patent fee structure set forth in the Consolidated Appropriations Act, the basic filing fee covers only the cost of the initial processing of an application. Thus, the Office is requiring payment of the basic filing fee (rather than just the processing and retention fee set forth in former § 1.21(l)) to retain the application.

Since the Office must retain an application to permit benefit of the application to be claimed under 35 U.S.C. 120 and § 1.78 in a subsequent nonprovisional or international application, the Office is also requiring payment of the basic filing fee (rather than just the processing and retention fee set forth in former § 1.21(l)) to permit benefit of the application to be claimed under 35 U.S.C. 120 and § 1.78 in a subsequent nonprovisional or international application.

The Office is also implementing the provision in 35 U.S.C. 41(a)(1)(G) to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s) and § 1.492(j)). A 21.6 cm by 27.9 cm (8½ by 11 inches) sheet of paper with a top margin of 2.0 cm (¾ inch), a left side margin of 2.5 cm (1 inch), a right side margin of 2.0 cm (¾ inch), and a bottom margin of 2.0 cm (¾ inch), will contain about 30 lines of text with double line spacing, with each line having about 50 to 65 characters. An ASCII text (the only format permitted by § 1.52(e)) document containing 30 lines of text, each line having about 50 to 65 characters, will be slightly less than two kilobytes in size. Since the Office permits text with a line spacing of 1½ (notwithstanding that ASCII does not permit 1½ line spacing), the Office is providing that each three kilobytes (rounding up) of content submitted on an electronic medium shall be counted as a sheet of paper for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s) and § 1.492(j)).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.16: Section 1.16(f) is amended to require a surcharge if any of the basic filing fee, the search fee, the examination fee, or the oath or declaration is filed in a nonprovisional application on a date later than the filing date of the application. Section 1.16(s) is amended to include a cross-reference to § 1.52(f).

Section 1.21: Section 1.21 is amended to remove and reserve paragraph (l), which set forth the fee for processing and retaining an application in which the basic filing fee has not been paid.

Section 1.52: Section 1.52(f)(1) is amended to provide that for purposes of determining the application size fee required by § 1.16(s) or § 1.492(j), for an application the specification (including claims) and drawings of which (excluding any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing filed in an

electronic medium in compliance with §§ 1.52(e) and 1.96), are submitted in whole or in part on an electronic medium other than the Office electronic filing system, each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper.

Section 1.53(f)(2) is amended to provide for purposes of determining the application size fee required by § 1.16(s), the paper size equivalent of an application submitted via the Office electronic filing system will be considered to be equal to seventy-five percent of the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system.

Section 1.53: Section 1.53(d)(3) is amended to correct the references to the design application basic filing fee (set forth in § 1.16(b)), and add references to the design application search fee (set forth in § 1.16(l)) and examination fee (set forth in § 1.16(p)). Section 1.53(f)(5) is amended to provide that if the applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

Section 1.78: Section 1.78(a)(1) is amended to provide that to claim the benefit of a prior-filed nonprovisional application under 35 U.S.C. 120 and § 1.78(a) in a subsequent nonprovisional or international application, the prior-filed nonprovisional application must be entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

Section 1.492: Section 1.492(h) is amended to require a surcharge if any of the search fee, the examination fee, or the oath or declaration is filed after the date of the commencement of the national stage (§ 1.491(a)). Section 1.492(j) is amended to include a cross-reference to § 1.52(f).

Section 1.495: Section 1.495(c)(1)(i) is amended to reinsert the language concerning the publication of the international application previously submitted under 35 U.S.C. 154(d) under § 1.417. This language was inadvertently deleted in the final rule to implement the Consolidated Appropriations Act. *See Changes to Implement the Patent Fee Related Provisions of the Consolidated Appropriations Act, 2005,* 70 FR 3880 (Jan. 27, 2005), 1291 *Off. Gaz. Pat. Office* 133 (Feb. 22, 2005) (final rule). Section 1.495(c)(1)(i) is amended to replace "the oath or declaration" with "any of the search fee, the examination fee, or the oath or declaration" for consistency with the change to § 1.492.

Response to comments: The Office published a notice proposing changes to the Office's practice for handling patent applications filed without the appropriate fees. *See Changes to the Practice for Handling Patent Applications Filed Without the Appropriate Fees,* 70 FR 9570 (Feb. 28, 2005), 1292 *Off. Gaz. Pat. Office* 143 (Mar. 22, 2005) (proposed rule). The Office received seven written comments (from intellectual property organizations, patent practitioners, and the general public) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: Several comments suggested that the elimination of the processing and retention fee practice is effectively a fee increase, and as such is not simply an interpretative or procedural rule change. Several comments also suggested that the elimination of the processing and retention fee practice is effectively a fee increase that should not be adopted without sufficient justification.

Response: The processing and retention fee practice was adopted in April of 1984. *See Revision of Patent Practice,* 49 FR 548 (Jan. 4, 1984) (final rule), and *Proposed Revision of Patent Practice,* 48 FR 39016 (Aug. 26, 1983) (proposed rule). This fee ($100.00 in 1984, or one-third of the $300.00 basic filing (non-small entity) in effect in April of 1984) was designed to cover the costs of initial processing and retention of an application that was abandoned prior to payment (or due to non-payment) of the basic filing fee. The Office proposed eliminating the processing and retention fee practice during the implementation of the provisional application practice provided for in the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809 (1994), but ultimately decided to retain the processing and retention fee practice. *See Changes to Implement 20-Year Patent Term and Provisional Applications,* 60 FR 20195, 20197 (Apr. 25, 1995) (final rule), and *Changes to Implement 20-Year Patent Term and Provisional Applications,* 59 FR 63951, 63952 (Dec. 12, 1994) (proposed rule). The Office has determined that it is now appropriate to eliminate the processing and retention fee practice in view of provisional application practice and the changes to the patent fee structure in the Consolidated Appropriations Act.

The Consolidated Appropriations Act provides that (during fiscal years 2005 and 2006) 35 U.S.C. 41(a)(1) shall be administered as though that provision reads: "[t]he Director shall charge * * * [o]n filing each application for an original patent, except for design, plant, or provisional applications, $300." *See* 35 U.S.C. 41(a)(1)(A). 35 U.S.C. 111(a) provides (in part) that: [t]he application must be accompanied by the fee required by law." *See* 35 U.S.C. 111(a)(3). Thus, 35 U.S.C. 41(a)(1) and 111 require the Office to charge and the applicant to pay (*inter alia*) the basic filing fee in a nonprovisional application. While a processing and retention fee practice may have been appropriate under a fee structure in which the filing fee was designed to cover the initial processing, the search, and the examination of an application, it is not consistent with the patent fee structure provided in the Consolidated Appropriations Act to maintain an "alternative" processing and retention fee practice when the patent fee structure provided in the Consolidated Appropriations Act sets forth a filing fee that is separate from a search fee and an examination fee and is designed to cover the initial processing of an application.

Further, the elimination of the processing and retention fee practice does not constitute a substantive change requiring notice-and-comment rule making under the Administrative Procedure Act. The change does not "encode a substantive value judgment," but simply discontinues the purely procedural practice of retaining a copy of an application for which the statutory filing fee had not been paid. *See Pub. Citizen* v. *Dep't of State,* 276 F.3d 634, 640 (D.C. Cir. 2002) (the focus in determining whether a rule falls under the procedural exemption of 5 U.S.C. 553(b)(A) is on asking whether the rule encodes a substantive value judgment). As a result of the change, applicants will not be able to require the Office to retain a copy of an application unless they resort to another existing procedure (*e.g.*, filing a provisional application instead of a nonprovisional application, or just paying the filing fee pay in the nonprovisional application). While the use of such an alternative procedure may result in a higher cost to the applicant, "an otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties." *James V. Hurson Associates* v. *Glickman,* 222 F.3d. 277, 281 (D.C. Cir. 2000).

Finally, notwithstanding that the Office maintains that these rule changes involve interpretative rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), it should be noted that

the elimination of the processing and retention fee practice was first published for public comment as provided for in 5 U.S.C. 553(b) prior to adoption of the rule changes to eliminate the processing and retention fee practice.

Comment 2: One comment suggested that whether to retain or eliminate the processing and retention fee practice is a decision for Congress and not the Office.

Response: As discussed, 35 U.S.C. 41(a)(1) and 111 require the Office to charge and the applicant to pay (*inter alia*) the basic filing fee in a nonprovisional application. The patent statute does not provide either for a processing and retention fee as an alternative to the basic filing fee or for a processing and retention fee practice.

Comment 3: One comment suggested that applicants may file a patent application without a fee and if a continuation application is filed within a short period of time, there is a statutory right to claim the benefit of the prior-filed application.

Response: As discussed, 35 U.S.C. 41(a)(1) and 111 require the Office to charge and the applicant to pay (*inter alia*) the basic filing fee in a nonprovisional application. There is no "statutory right" to file an application without paying the basic filing fee, regardless of whether a continuation application that claims the benefit of the prior-filed application is ever filed.

Comment 4: One comment suggested that the Office should not "burn" an application file wrapper simply because the applicant has not paid the basic filing fee, and further suggested that an electronic copy of an application will continue to exist even if the Office "burns" a paper copy of the application file wrapper.

Response: The Office did not indicate that it would "burn" or necessarily remove from its paper or electronic records those applications in which the basic filing fee has not been paid. The Office is simply providing that if the applicant does not pay the basic filing fee during the pendency of a nonprovisional application, the Office may dispose of the application. Put simply, the Office is not obligating itself to retain an abandoned nonprovisional application among its records (paper or electronic) if the applicant does not pay at least the basic filing fee during the pendency of the application.

Comment 5: One comment suggested that language of § 1.16 and § 1.492(h) was not consistent with the discussion of those sections in the preamble, and requested clarification of the proposed changes to § 1.16 and § 1.492(h).

Response: Section 1.16(f) requires a surcharge in any application filed under 35 U.S.C. 111(a) in which any of the basic filing fee, the search fee, or the examination fee is paid on a date later than the filing date of the application. Section 1.492(h) requires a surcharge in any application filed under the PCT in which either of the search fee or the examination fee is paid after the date of the commencement of the national stage (§ 1.491(a)).

Comment 6: Several comments suggested that the proposed provision that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper is too low. One comment gave an example of a 21,496 kilobyte table that prints as 5,081 pages, which if submitted on a compact disc would be treated as 10,748 pages.

Response: In view of the four kilobytes per page ratio of the table provided as an example, it appears that the lines of the table are single spaced. The rules of practice provide for either 1½ or double line spacing, but not for single line spacing. See § 1.52(b)(2)(i). However, since the rules of practice provide for 1½ line spacing, the Office is revising this provision to indicate that each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper (notwithstanding that ASCII does not provide for 1½ line spacing).

Comment 7: Several comments suggested that the proposed provision that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper, being based solely on ASCII text content, fails to appreciate that Tagg(ed) Image File Format (TIFF) drawings sheets are usually far larger than two kilobytes per page. Another comment suggested that a typical electronic drawing will measure at least 50 kilobytes, and often will range from 100 to 200 kilobytes.

Response: The rules of practice do not provide for the submission of either drawings sheets or any TIFF application documents on a compact disc. *See* §§ 1.52(e)(1) and (e)(3). Applicants may submit TIFF drawings sheets in an application submitted via the Office electronic filing system; however, the provisions of § 1.52(f)(1) that each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper does not apply to an application submitted via the Office electronic filing system.

Comment 8: One comment questioned whether the provisions of § 1.52(f)(1) were limited to tables, since sequence and computer program listings are excluded. The comment further suggested that, if the provisions of § 1.52(f)(1) have broader applicability, then it has discriminatory effect based on subject matter of the patent application because chemical patent applications and, in particular, pharmaceutical patent applications are treated unfavorably under the provisions of § 1.52(f)(1). The comment indicated that these applications tend to have an extensive number of embedded chemical structures, and the electronic size of images such as ChemDraw structures, PDF tables and the like, which have significantly higher byte totals when compared to the ASCII text used for the calculations. The comment gave an example of an application having a total of 68 pages but an electronic size of 640 kilobytes (which would be treated as 340 pages if each two kilobytes were treated as equal to one page).

Response: Section 1.52(e) currently limits the application documents that may be submitted on compact disc to computer program listings, sequence listings, and tables. *See* § 1.52(e)(1). Therefore, for an application submitted in compliance with the rules of practice (§ 1.52(e)), the provisions of § 1.52(f)(1) that each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper would apply only to tables. If an applicant submitted other application documents on a compact disc in violation of § 1.52(e)(1), and/or in a format not permitted by § 1.52(e)(3) (*i.e.*, in a format other than ASCII), any unfavorable treatment would be due to the applicant's failure to follow the rules of practice and not due to any action on the part of the Office.

Comment 9: One comment suggested that the Office should consider a flat processing fee for electronic medium submissions that would compensate the Office for any additional work. Another comment suggested that there be an upper limit to the fees similar to that provided for by Part 8 of the Administration Instructions (AI) under the Patent Cooperation Treaty.

Response: The Office does not consider a "flat processing fee" or an "upper limit" to be appropriate. 35 U.S.C. 41(a)(1)(G) authorizes the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G), not to create a new application size fee regime for applications filed in whole or in part in an electronic medium.

Comment 10: Several comments suggested that the Office should

reconsider the provisions of proposed § 1.52(f)(1) (that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper) in light of the Office's stated goal to increase the number of electronic submissions.

Response: The Office has a goal of increasing usage of its electronic filing system. The Office is revising § 1.52(f)(2) to provide that the paper size equivalent of the specification (including claims) and drawings of an application submitted via the Office electronic filing system will be considered to be seventy-five percent of the number of sheets of paper present in the specification (including claims) and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system for purposes of determining the application size fee required by § 1.16(s). This change is being made to ensure that number of sheets of paper present in the specification (including claims) and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system does not exceed the number of pages in the application when printed out by the applicant. The filing of application documents on compact disc as permitted by § 1.52(e), however, is not germane to the Office's goal of increasing usage of its electronic filing system.

Rule Making Considerations

Administrative Procedure Act: The changes in this final rule relate solely to the procedures to be followed in prosecuting a patent application, *i.e.*, the procedures for paying the fees due upon filing an application for patent. This final rule does not change the amount of fees charged by the Office. Specifically, the changes in this final rule concern the procedures for payment of the filing fee, search fee, and examination fee, and setting forth which fees must be paid in order for a nonprovisional application to be processed and retained by the Office such that it may be used as the basis for foreign filing and for benefit claims under 35 U.S.C. 120 and § 1.78(a). Therefore, these rule changes involve interpretative rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are "rules of agency organization, procedure, or practice" and are exempt from the Administrative Procedure Act's notice and comment requirement) and *JEM Broadcasting Co.* v. *FCC*, 22 F.3d 320, 327 (D.C. Cir. 1994) (rule under which any flawed application is summarily dismissed without allowing the applicant to correct its error is merely procedural despite its sometimes harsh effects on applicants); *see also Merck & Co., Inc.* v. *Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) ("it is doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretative rules, general statements of policy, * * * procedure, or practice.' ") (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)).

Under the Office's pre-existing "missing parts" practice, an applicant was required to pay a surcharge if the basic filing fee was not present on filing in an application. The Consolidated Appropriations Act splits the patent application basic filing (or basic national) fee into a separate basic filing (or basic national) fee, search fee and examination fee. Therefore, the replacement of the basic filing fee with the basic filing fee, the search fee, or the examination fee is simply a procedural change that is necessary to maintain (or restore) the *status quo ante* with respect to the Office's pre-existing "missing parts" practice.

The processing and retention fee practice allows applicants to file an application without the filing fee and to pay only a processing and retention fee in order for the application to be used as a basis for foreign filing and for priority under 35 U.S.C. 120. Under the revised patent fee structure set forth in the Consolidated Appropriations Act (which splits the filing fee into a separate filing, search fee and examination fee), the filing fee covers the cost of the initial processing and retention of an application. Thus, requiring payment of the basic filing fee under the Consolidated Appropriations Act in order for the Office to process and retain an application such that the application may be used as a basis for foreign filing and for priority under 35 U.S.C. 120 is more consistent with the filing fee scheme set forth in the Consolidated Appropriations Act than is continuing the processing and retention fee practice.

The Consolidated Appropriations Act provides for the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of calculating the application size fee specified in 35 U.S.C. 41(a)(1)(G). Thus, setting a paper size equivalent based upon the number of kilobytes of content that can fit onto a sheet of paper (given the current requirements for applications filed in part on a compact disc and for paper size and margins) simply sets forth the procedures for determining the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of calculating the application size fee.

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0031, and 0651–0032. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers. The changes in this notice concern the procedures for payment of the filing fee, search fee, examination fee, and the application size fee, including setting forth which fees must be paid in order for an application to be processed and retained by the Office such that it may be used as the basis for foreign filing and for benefit claims under 35 U.S.C. 120 and 1.78(a).

Interested persons are requested to send comments regarding these

information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.16 is amended by revising paragraphs (f) and (s) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(f) Surcharge for filing any of the basic filing fee, the search fee, the examination fee, or the oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.27(a))—$65.00

By other than a small entity—$130.00

* * * * *

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))—$125.00

By other than a small entity—$250.00

* * * * *

§ 1.21 [Amended]

■ 3. Section 1.21 is amended by removing and reserving paragraph (l).

■ 4. Section 1.52 is amended by revising paragraph (f) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(f)(1) Any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j). For purposes of determining the application size fee required by § 1.16(s) or § 1.492(j), for an application the specification and drawings of which, excluding any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, are submitted in whole or in part on an electronic medium other than the Office electronic filing system, each three kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper.

(2) Except as otherwise provided in this paragraph, the paper size equivalent of the specification and drawings of an application submitted via the Office electronic filing system will be considered to be seventy-five percent of the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system for purposes of determining the application size fee required by § 1.16(s). Any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing in compliance with § 1.96, submitted via the Office electronic filing system will be excluded when determining the application size fee required by § 1.16(s) if the listing is submitted in ASCII text as part of an associated file.

* * * * *

■ 5. Section 1.53 is amended by revising paragraphs (d)(3) and (f)(5) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(d) * * *

(3) The filing fee, search fee, and examination fee for a continued prosecution application filed under this paragraph are the basic filing fee as set forth in § 1.16(b), the search fee as set forth in § 1.16(l), and the examination fee as set forth in § 1.16(p).

* * * * *

(f) * * *

(5) If applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

* * * * *

■ 6. Section 1.78 is amended by removing paragraph (a)(1)(iii) and revising paragraph (a)(1)(ii) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) * * *

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

* * * * *

■ 7. Section 1.492 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1.492 National stage fees.

* * * * *

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§ 1.491(a)) pursuant to § 1.495(c):

By a small entity (§ 1.27(a))—$65.00

By other than a small entity—$130.00

* * * * *

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))—$125.00

By other than a small entity—$250.00

■ 8. Section 1.495 is amended by revising paragraphs (c)(1)(i) and (c)(3) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c)(1) * * *

(i) A translation of the international application, as filed, into the English language, if it was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2));

* * * * *

(3) The payment of the processing fee set forth in § 1.492(i) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(h) is required for acceptance of any of the search fee, the examination fee, or the oath or declaration of the inventor after the date of the commencement of the national stage (§ 1.491(a)).

* * * * *

Dated: May 19, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–10585 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–4]

Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is amending its rules to require cable operators, satellite carriers, and manufacturers and importers of digital audio recording technology and media to file with the Licensing Division of the Copyright Office a copy of their statement of account together with the original statement of account.

DATE: This rule shall take effect on July 1, 2005.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Associate General Counsel, Copyright GC/R&I, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, requires cable operators and satellite carriers making secondary transmissions of broadcast signals under a statutory license to file with the Copyright Office statements of account every six months together with the royalty fees required for use of the licenses. 17 U.S.C. 111(d)(2) and 119(b)(1). Similarly, entities that manufacture and distribute and/or import and distribute digital audio recording devices or digital audio recording media in the United States must file with the Licensing Division quarterly and annual statements of account. 17 U.S.C. 1003.

Currently, a licensee operating under any of these three statutory licenses need file only the original statement of account with the Copyright Office at the appropriate time. In the case of cable filings, this form is then copied by the staff in the Licensing Division before examination, a process which may take four to six months to complete. In the meantime, statements of account are not available for routine public viewing. Such a process is inefficient and inhibits the timely processing of the statements. For this reason, the copyright owners who are the beneficiaries of the royalty fees paid to the Copyright Office have requested that the Office amend its rules to require the licensees to file both an original statement of account and a copy of the statement at the time of payment of the royalty fees.

Their suggestion offers a practical and inexpensive solution to the problems noted above. Filing an original and one copy of the statement of account will have a two–fold benefit. The submission of a second copy will eliminate one time–consuming step in the processing of the statements, thereby increasing the efficiency associated with handling the statements at the initial stage. Certainly, it is far easier and less expensive for the licensee to make a single copy of its statement of account than to have the staff of the Licensing Division assume this burden on behalf of the thousands of licensees who file quarterly, semi–annual, and annual statements of account. Moreover, the ready availability of a copy of the cable and satellite statements of account will expedite the creation of the public file for review by copyright owners and other interested parties.

For these reasons, the Copyright Office is amending its rules to require each licensee to file a copy of its statement of account with the Licensing Division of the Copyright Office along with the original statement of account.

The Office is also revising the section heading for § 201.11 by removing the phrase "for private home viewing" to reflect the fact that the section 119 statutory license is no longer limited to private home viewing. Under the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA"), Public Law 108–447, which was signed into law on December 8, 2004, satellite carriers can now provide secondary retransmissions to private homes and to commercial establishments.

This final rule is being published without opportunity for notice and comment because it is a rule of agency practice and procedure. Moreover, the Office finds that there is good cause to conclude that providing the opportunity for notice and comment would be impracticable, unnecessary and contrary to the public interest because this rule simply requires a licensee to make and submit a single copy of its statements of account, a trivial burden compared to the administrative burden to the Office of making copies of all statements of account. *See* 5 U.S.C. 553(b)(A) and (B).

Regulatory Flexibility Act Statement

Although the Copyright Office, as a department of the Library of Congress and part of the Legislative Branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendments would not have a significant economic impact on a substantial number of small business entities that would require a provision of special relief for them. The amendments are designed to minimize any significant economic impact on small business entities.

List of Subjects in 37 CFR 201

Copyright.

Final Regulations

■ In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.11 is amended as follows:

■ a. by revising the section heading,

■ b. by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and

■ c. by adding a new paragraph (g).

The revisions and additions to § 201.11 reads as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(g) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.

* * * * *

■ 3. Section 201.17 is amended as follows:

■ a. by redesignating paragraphs (j) and (k) as paragraphs (k) and (l), respectively, and
■ b. by adding a new paragraph (j).

The revisions and additions to § 201.17 reads as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(j) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.

* * * * *

■ 4. Section 201.28 is amended as follows:
■ a. by redesignating paragraphs (g) through (k) as paragraphs (h) through (l), respectively, and
■ b. by adding a new paragraph (g).

The revisions and additions to § 201.28 reads as follows:

§ 201.28 Statements of Account for digital audio recording devices and media.

* * * * *

(g) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.

* * * * *

Dated: May 18, 2005

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 05–10552 Filed 5–25–05; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–ME–0005; A–1–FRL–7913–3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; VOC Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions establish requirements to reduce volatile organic compound (VOC) emissions from mobile equipment repair and refinishing, and solvent cleaning operations. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective July 25, 2005, unless EPA receives adverse comments by June 27, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0005 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. 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.
3. E-mail: *conroy.dave@epa.gov*.
4. Fax: (617) 918–0661.
5. Mail: "RME ID Number R01–OAR–2004–ME–0005," David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0005. 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://docket.epa.gov/rmepub/*, 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 Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site 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 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 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 hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1047, *arnold.anne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

II. Rulemaking Information

This section is organized as follows:

A. What Action Is EPA Taking?

EPA is approving Maine's Chapter 153, "Mobile Equipment Repair and Refinishing," and Chapter 130, "Solvent Cleaners," and incorporating these regulations into the Maine SIP.

B. What Are the Requirements of Maine's New Regulations?

Maine's Chapter 153 applies to any person who applies mobile equipment repair and refinishing coatings. The regulation establishes: (a) Requirements for using improved transfer efficiency coating and application equipment, such as high volume low pressure spray guns; (b) requirements for enclosed spray gun cleaning techniques; (c) minimum training standards in the proper use of equipment and materials; and (d) other work practice standards, such as storing coatings and solvents in closed containers. Compliance with the rule is required by January 1, 2005. VOC limits for mobile equipment repair and refinishing coatings are not included in Maine's Chapter 153 but are in effect nationally under the Federal requirements at 40 CFR part 59, subpart B, National VOC Emissions Standards for Automobile Refinish Coatings, which EPA adopted in 1998.

Maine's Chapter 130 includes equipment and work practice standards for batch cold cleaning machines, batch vapor cleaning machines, in-line cleaning machines, and cleaning machines not having a solvent/air interface. An alternative standard for batch vapor or in-line cleaning machines is also included. Also, with the exception of certain specified exemptions, the rule requires that cold cleaning machines use a solvent with a vapor pressure of 1.00 mm Hg or less. In addition, Chapter 130 includes the appropriate monitoring and recordkeeping requirements to ensure compliance with the specified performance standards. Finally, the rule requires compliance with the new low vapor pressure requirement by May 1, 2005, and compliance with the other requirements of the rule upon its effective date (i.e., June 28, 2004).

C. Why Is EPA Approving Maine's Regulations?

EPA has evaluated Maine's Chapter 153 and Chapter 130 and has found that these regulations are generally consistent with EPA guidance and the Ozone Transport Commission (OTC) model rules for the relevant source categories. The specific requirements of Maine's regulations and EPA's evaluation of these requirements are detailed in a memorandum, dated April 22, 2005, entitled "Technical Support Document—Maine—VOC Regulations" (TSD). The TSD and Maine's regulations are available in the docket supporting this action.

The OTC has developed model rules for several VOC source categories, and the OTC states, including Maine, have signed a memorandum of understanding (MOU) committing to adopt these model rules. (See "Model Rule for Solvent Cleaning," and "Model Rule for Mobile Equipment Repair and Refinishing," both dated March 6, 2001.)

Several other OTC states have also recently adopted mobile equipment repair and refinishing rules and solvent cleaning rules based on the OTC model rules and EPA has already approved some of these states' rules.[1]

In addition, it should also be noted that EPA previously approved an earlier version of Maine's Chapter 130 solvent cleaning rule into the Maine SIP. (See 59 FR 31157; June 17, 1994.) The earlier version of Chapter 130 was based on EPA's control technique guideline (CTG) for solvent cleaning.[2] As discussed in more detail in the TSD, EPA has determined that the new version of Chapter 130 meets the section 110(l) anti-backsliding provisions of the Clean Air Act (CAA). Therefore, EPA is approving Chapter 130 to enforce the requirement under the CAA for reasonably available control technology on this CTG category. Maine is not submitting Chapter 153 to meet any specific control requirements under the Clean Air Act. EPA is approving Chapter 153 because it will strengthen Maine's SIP. If Maine elects to rely on Chapter 153 in a future control strategy SIP (e.g., a rate of progress plan or an attainment demonstration), the rule will become a control measure required under the Clean Air Act for purposes of that control strategy SIP.

D. What Is the Process for EPA To Approve These SIP Revisions?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective July 25, 2005 without further notice unless the EPA receives relevant adverse comments by June 27, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 25, 2005 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

EPA is approving Maine's Chapter 153, "Mobile Equipment Repair and Refinishing," and Chapter 130, "Solvent Cleaners," and incorporating these regulations into the Maine SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

[1] For example, on November 22, 2002, EPA approved Delaware's mobile equipment repair and refinishing rule (67 FR 70315), and on January 23, 2004, EPA approved New York's solvent cleaning rule (69 FR 3237).

[2] "Control of Volatile Organic Emissions from Solvent Metal Cleaning," (EPA–450/2–77–022), November 1977.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of 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 U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(54) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on March 8, 2004, and June 28, 2004.

(i) Incorporation by reference. (A) Chapter 153 of the Maine Department of Environmental Protection Regulations, "Mobile Equipment Repair and Refinishing," effective in the State of Maine on February 25, 2004.

(B) Chapter 130 of the Maine Department of Environmental Protection Regulations, "Solvent Cleaners," effective in the State of Maine on June 28, 2004.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.1031, Table 52.1031 is amended by adding a new entry to existing state citation 130, and by adding a new state citation, 153, to read as follows:

§ 52.1031 EPA-approved Maine Regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
*	*	*	*	*	*
130	Solvent Cleaners	6/17/04	5/26/05	[Insert *FR* citation from published date]	(c)(54).

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
153	Mobile Equipment Repair and Refinishing.	2/5/04	5/26/05	[Insert *FR* citation from published date]	(c)(54).

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–10481 Filed 5–25–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–140–128; FRL–7912–3]

Revisions to the Arizona State Implementation Plan, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on March 23, 2005 and concern volatile organic compound (VOC) emissions from expandable polystyrene foam operations. We are approving local Rule 358—Polystyrene Foam Operations. This rule regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on June 27, 2005.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

Arizona Department of Environmental Quality, Air Quality Division, 1100 West Washington Street, Phoenix, AZ, 85007; and,

Maricopa County, Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004–1942.

A copy of the rule may also be available via the Internet at *http://www.maricopa.gov/AQ/Rules.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On March 23, 2005 (70 FR 14616), EPA proposed to approve the following rule into the Arizona SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
Maricopa County	358	Polystyrene Foam Operations	04/20/05	04/25/05

We proposed to approve Rule 358 because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on this rule and our evaluation.

On May 2, 2005, we found this rule submittal met the completeness criteria in 40 CFR part 51, appendix V. On February 22, 2005, the Arizona Department of Environmental Quality (ADEQ) requested EPA to parallel process our review of Rule 358 concurrently with Maricopa County's rule adoption process. We agreed to parallel process Rule 358 using our authority under 40 CFR part 51, appendix V and, for the purposes of our March 23, 2005 proposal, we made a completeness finding on the February 22, 2005 submittal according to the criteria at 40 CFR part 51, appendix V, 2.3.1. Our May 2, 2005 completeness finding applies to the April 25, 2005 submittal that is the subject of this rulemaking.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Seth v.d.H. Cooley, Duane Morris, LLP representing WinCup Holdings, Inc. (WinCup); letter dated April 22, 2005 and received via electronic mail April 22, 2005. The comments and our responses are summarized below.

Comment #1: The emission limit in Rule 358, Section 303, 3.2 pounds of VOC per 100 pounds of polystyrene beads processed, (Section 303 limit) has no technical basis. There is no connection between Maricopa County Air Quality Division's (MCAQD) RACT Analysis and the Section 303 limit.

Response #1: In their RACT Analysis,[1] MCAQD reviewed the expandable polystyrene industry, a wide variety of possible emission control options, and emission limits and controls adopted in other jurisdictions. Their RACT analysis outlined a compliance strategy of installing specific control equipment and process modifications, such as a regenerative thermal oxidizer, use of a total enclosure for capturing prepuff polystyrene aging emissions, and different prepuff polystyrene aging regimes, that could be used at the WinCup facility to meet the Section 303 emission limit. MCAQD calculated a specific emission reduction due to WinCup's use of the compliance

[1] "RACT Analysis for Rule 358 Polystyrene Foam Operations," Planning & Analysis Section, Maricopa County Air Quality Department, Phoenix, AZ April 21, 2005.

strategy, 37.3 tons per year.[2] Then, MCAQD calculated the cost effectiveness of these emission controls at $5,414 per ton of VOC reduced.[3]

MCAQD developed the Section 303 compliance strategy after reviewing provisions adopted in other states and localities (see Chapter 5.2) and how cupmakers met similar and more stringent emission limits in the Bay Area Air Quality Management District (BAAQMD Rule 8–52, 2.8 pounds of VOC per 100 pounds of beads processed, for our discussion, the "Rule 8–52 limit") and South Coast Air Quality Management District (SCAQMD Rule 1175, 2.4 pounds of VOC per 100 pounds of beads processed, for our discussion the "Rule 1175 limit"). Specifically, Chapter 10 of the RACT analysis describes how MCAQD established the Section 303 standard by adding 0.4 pounds VOC to BAAQMD's 2.8 pound VOC limit. MCAQD added the 0.4 pounds VOC to account for residual VOC in finished products that are not stored at the WinCup Corte Madera manufacturing facility. WinCup supplied this information used to estimate residual VOC content in their finished products.[4]

Finally, in the appendices to the RACT analysis, MCAQD supplied the information needed to review the 2001 pre-rule implementation VOC emissions baseline case, the post-rule implementation estimated VOC emissions, the resulting VOC emission reductions, and rule implementation costs. These appendices show the different VOC capture and destruction percentages that result from implementing the MCAQD's control strategy and that ultimately allow a cupmaker to meet the Section 303 standard. MCAQD's calculations use the Section 303 limit as an end point for estimating emission reductions under the rule and the Section 303 limit can be mathematically derived from the information provided in the RACT Analysis and appendices.

As MCAQD points out,[5] they did not specify precise WinCup production inputs, exact emission rates related to WinCup's specific production processes or manufacturing practices, or discuss production figures or emission rates for specific WinCup product lines because WinCup labeled this information confidential. Furthermore, MCAQD could not present information in such a way as to allow a reader to derive the information which WinCup claimed as confidential. Had WinCup allowed MCAQD to be more forthcoming with this information labeled as confidential, the RACT Analysis and its appendices could have demonstrated more clearly the existing link between the Section 303 emission limit and the VOC emissions and compliance estimates used in the RACT Analysis.

Contrary to the comment, MCAQD provides three independent rationales supporting the section 303 limit. First, similar and more stringent limits are in effect in other areas. Second, by using a reasonably available and similar control strategy employed by cupmakers to meet these similar and more stringent limits, it is technically feasible to meet the Section 303 limit. Third, the cost of compliance with the Section 303 limit is reasonable. In contrast, WinCup provided no evidence that compliance with the Section 303 limit is unreasonable for Maricopa County facilities.

Comment #2: The Section 303 limit is derived from the BAAQMD Rule 8–52 emission limit. As determined by BAAQMD, the Rule 8–52 limit is a Best Available Retrofit Control Technology (BARCT) standard. Under California regulation, BARCT limits are more stringent than RACT limits for the same source. Because the Rule 8–52 limit is defined as BARCT, the Section 303 limit cannot represent RACT.

Response #2: As discussed in Response #1, the Rule 8–52 limit was not the only basis for the Section 303 limit. However, even if MCAQD had borrowed wholly from the BAAQMD rule, nothing in Federal law precludes MCAQD from adopting in Rule 358 limits taken from other jurisdictions and submitting them to EPA. There are over a hundred state and local agencies in the United States that establish prohibitory air pollution regulations like Rule 358 for stationary sources of pollution. It is necessary and appropriate for these agencies to build on work performed by others with similar sources.

EPA has defined RACT as the, "lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility" (44 **Federal Register** 53762, September 17, 1979). MCAQD has the primary obligation to analyze the source category and determine what controls are applicable to their jurisdiction and sources and part of this obligation involves looking at limits applied to similar sources in other jurisdictions.

In Rule 358, MCAQD must adopt and submit to EPA limits that meet our RACT criteria. At MCAQD's discretion, they may adopt and submit to EPA limits that exceed our RACT criteria. We note that the commenter provided no evidence that compliance with the Section 303 limit is unreasonable for Maricopa County facilities given EPA's definition of RACT.

Also, we point out that BAAQMD Rule 8–52 has one set of limits intended fulfill both RACT and BARCT requirements under California law. In contrast, BAAQMD could have specified separate RACT and BARCT limits as they have done, for example, within BAAQMD Rule 9–9. However, BAAQMD did not do this in adopting Rule 8–52.

Comment #3: MCAQD has not demonstrated the technical and economic feasibility of the Section 303 limit based on the physical structures and layout of Wincup's Maricopa facility.

Response #3: It is not appropriate for state and local agencies to analyze the physical structures and layout of every potentially affected facility before adopting requirements. Instead, agencies consider typical facilities and design elements common to a class of facilities.

As we outlined in Response to Comment #1, MCAQD did consider the technical and cost feasibility of implementing the Section 303 standard. MCAQD provided three independent rationales for the section 303 limit. First, in comparison to the Section 303 limit, similar and more stringent limits are in effect in other areas such as BAAQMD and SCAQMD. Second, by using a reasonably available and similar control strategy employed by cupmakers to meet these similar or more stringent limits, it is technically feasible to meet the Section 303 limit. Third, the cost of compliance with the Section 303 limit is reasonable. In contrast, WinCup has provided no evidence that compliance with the Section 303 limit is technically or economically infeasible for their Phoenix facility.

Comment #4: Under current WinCup operating conditions, the VOC content of pre-puff polystyrene fed to cup molding machines is 3.3 to 3.9 percent. Therefore, the Section 303 limit cannot be met by installing the control equipment MCAQD assigned to the WinCup facility in the RACT Analysis without changing the facility's pre-puff polystyrene aging process. MCAQD

[2] *See* RACT Analysis at Table 12–1, Appendix A–2, Tables III & IV, and Appendix A–3).

[3] *See* RACT Analysis at Table 12–1 and Appendix A–2, Table II.

[4] *See* citations 11A, B, and C in RACT Analysis bibliography.

[5] *See* Comment and Response #5, Notice of Final Rulemaking (NFRM), Maricopa County Air Pollution Control Regulations, Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

failed to consider and analyze how WinCup might be able to change its pre-puff aging processes without affecting product quality. This failure constitutes an arbitrary and capricious action.

Response #4: MCAQD reviewed the current operating conditions at WinCup and other expandable polystyrene molding operations. They found that block makers were able to maintain product quality while modernizing their manufacturing equipment, using a lower VOC bead content, and installing more efficient VOC capture and control equipment.[6] MCAQD questioned cupmaker Dart Container Corporation on how it meets SCAQMD's more stringent Rule 1175 limit while making similar high density products that WinCup cites as problematic in implementing the Section 303 limit, and MCAQD learned that product quality did not suffer due to an emission reduction strategy that included a pre-puff polystyrene aging regime.[7] MCAQD has information from WinCup showing that they already mold 4.5 pound per cubic foot density product from 3.0% VOC pre-puff. If WinCup installs a 90% efficient emission control system and ages the pre-puff to 2.9% VOC, it would meet the 3.2 pound VOC limit.[8] We cite this evidence presented by MCAQD to show that they have performed an analysis and have reason to believe that the Section 303 limit has been and can be met as described in the RACT Analysis, through aging pre-puff polystyrene adequately and capture and control of these and other VOC emissions prior to molding.

Also, MCAQD points out that the form of Section 303 limit does not preclude WinCup from implementing VOC emission controls on molding or storage emissions.[9] WinCup has presented data to MCAQD showing that specific products lines have molding losses of 0.8 pounds of VOC and storage losses of 1.0 pound VOC per 100 pound beads processed. MCAQD determined that these emission rates and the product's production volumes are high enough to make capture and control of either of these VOC emission points cost-effective.[10] Consequently, WinCup has considerable flexibility in how it may choose to comply with the Section 303 limit.

Lastly, we do not believe MCAQD must specify exactly how WinCup will meet the Section 303 limit in every conceivable circumstance for every single product line without modification of WinCup's current operating conditions before MCAQD can adopt and apply the Section 303 limit to WinCup's operations. MCAQD need only perform an analysis sufficient to demonstrate that the Section 303 limit is consistent with our definition of RACT; that the Section 303 limit is reasonably available, both on a technical and economic basis.

Comment #5: In EPA's proposed rulemaking action on Rule 358, EPA found complete the February 22, 2005 SIP revision submitted to EPA by ADEQ using the criteria at 40 CFR part 51, appendix V, 2.3.1 (The Completeness Criteria). Under the Completeness Criteria, a SIP submittal must contain a fully justified basis. ADEQ's February 22, 2005 SIP submittal is deficient because it does not support a RACT standard for expandable polystyrene cup-makers. As a result, EPA must disapprove this SIP revision pursuant to 40 CFR part 51, appendix V.

Response #5: The comment confuses EPA's completeness finding with EPA's subsequent qualitative review and proposed action. The Completeness Criteria provide a list of materials that a SIP revision should contain when submitted to EPA for review. For a few items on the list, a state is allowed discretion in determining the appropriateness of the criterion to the submittal; however, EPA may contradict the state's decision in our completeness finding. EPA's March 23, 2005 completeness finding states that Arizona submitted the material EPA needed to review and take an action on the SIP revision. EPA is neither required by 40 CFR part 51, appendix V, nor did we use it to review the technical and legal sufficiency of Rule 358. It is after our completeness finding that we determine whether or not the SIP submittal complies with the relevant federal requirements discussed in our TSD, proposal, and outlined in Response #1.

Comment #6: EPA is required to review and approve the technical support submitted with the SIP revision. Among other items, the technical support must include quantification of emission changes as a result of the proposed SIP revision, evidence that emission limitations are based on continuous emission reduction technology, and any modeling required to support the revision (see 40 CFR part 51, appendix V, 2.2 (c),(e), and (h)). Otherwise, the Section 303 limit is an unsupported numerical standard and EPA's action to approve this SIP submittal is arbitrary and capricious.

Response #6: The comment cites the three completeness criteria listed above as the basis for the deficiency described in Comment #5. Beyond that, the comment does not claim that these three completeness elements were missing. Nonetheless, in our March 23, 2005 completeness finding, we found that Arizona and MCAQD submitted all the required elements needed for EPA to review the February 22, 2005 SIP Revision. In particular, we found that Arizona quantified emission changes as a result of the proposed SIP revision; we found evidence that the emission limitations are based on a continuous emission reduction technology; and, we found that Arizona provided modeling sufficient to support the revision.[11] In the case of modeling, no ambient aerometric modeling or specific aerometric models were required for this rulemaking so the majority of the elements described within the criterion are not relevant. MCAQD estimated VOC emissions prior to and after rule implementation according to a specified control strategy. This simple modeling was all we required.

We point out that our March 23, 2005 completeness finding supported our proposed action on Arizona's February 22, 2005 parallel processing request and SIP revision. MCAQD adopted Rule 358 on April 20, 2005 after a lengthly public comment period and Arizona submitted a new SIP revision to complete their parallel processing request on April 25, 2005. Our May 2, 2005 completeness finding and today's final action concern this April 25, 2005 SIP submittal. In this submittal, we note that Arizona and MCAQD may submit additional information in support of their SIP revision as a result of their public review and comment period.

III. EPA Action

No comments were submitted that change our assessment that Rule 358 complies with the relevant CAA

[6] *See* Comment and Response #24, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[7] *See* Comment and Response #1 and 24, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[8] *See* Comment and Response #24, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[9] *See* Comment and Response #20, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[10] Again, MCAQD is restricted from presenting the specific product and production volumes due to confidentiality strictures applied by WinCup to their data.

[11] These three elements of the SIP submittal can be found in the February 11, 2005 Arizona Administrative Register Notice of Proposed Rulemaking and the RACT Analysis, draft January 28, 2005 at pages 42–44 and appendices A–2 and A–3.

requirements. Also, because our proposed action was based on a parallel processing submittal, Maricopa County's April 20, 2005 adopted version and subsequent submittal of Rule 358 must be similar in meaning and content to the February 11, 2005 version of the rule published in the Arizona Administrative Register submitted for parallel processing. There are no substantial and meaningful differences between the two submitted versions of Rule 358. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 358 into the Arizona SIP.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(122) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(122) A plan revision was submitted on April 25, 2005 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 358 adopted on April 20, 2005.

[FR Doc. 05–10491 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0002; A–1–FRL–7915–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Smaller-Scale Electric Generating Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), particulate matter (PM), and carbon monoxide (CO) from smaller-scale electric generating units. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action

in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective July 25, 2005, unless EPA receives adverse comments by June 27, 2005. If EPA receives adverse comments, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0002 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. 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.
3. E-mail: *conroy.dave@epa.gov*.
4. Fax: (617) 918–0661.
5. Mail: "RME ID Number R01–OAR–2004–ME–003" David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0002. 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://docket.epa.gov/rmepub/*, 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 Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site 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 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, or 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 hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christine Sansevero, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1699, *sansevero.christine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

II. Rulemaking Information

This section is organized as follows:

A. What action is EPA taking?
B. What are the requirements of Maine's new regulation?
C. Why is EPA approving Maine's regulation?
D. What is the process for EPA to approve this SIP revision?

A. What Action Is EPA Taking?

EPA is approving Maine's Chapter 148, "Emissions from Smaller-Scale Electric Generating Resources," and incorporating this regulation into the Maine SIP.

B. What Are the Requirements of Maine's New Regulation?

Chapter 148, "Emissions from Smaller-Scale Electric Generating Resources," includes emissions standards for small electric generating facilities with a capacity equal to or greater than 50 kilowatts installed on or after January 1, 2005. Chapter 148 specifies emission standards for NO_X, PM, and CO. Table 1 summarizes the emission standards (in pounds per megawatt hour-lbs/MWhr) for non-emergency generators.

TABLE 1.—EMISSION STANDARDS FOR NON-EMERGENCY GENERATORS

Timeline	NO_X	PM	CO
Installed on or after January 1, 2005	4.0 lbs/MWhr	0.7 lbs/MWhr	10.0 lbs/MWhr.

TABLE 1.—EMISSION STANDARDS FOR NON-EMERGENCY GENERATORS—Continued

Timeline	NO_X	PM	CO
Installed on or after January 1, 2009	1.5 lbs/MWhr	0.07 lbs/MWhr	2.0 lbs/MWhr.

In addition, effective August 9, 2004, all diesel generators subject to Chapter 148 must be fueled with firing fuel with a sulfur content of less than 500 parts per million. Beginning June 1, 2010, all diesel-powered generators must be fueled with firing fuel with a sulfur content of less than 15 parts per million. Emergency generators are required to meet the emission standards established by EPA for non-road engines. The rule also includes the appropriate certification, registration, and recordkeeping requirements to ensure compliance with the specified emission standards and fuel sulfur limits.

C. Why Is EPA Approving Maine's Regulation?

EPA has evaluated Maine's Chapter 148 and has found that this regulation creates new emission standards for a previously unregulated source category. The requirements of the rule are based in large part on the Regulatory Assistance Project (RAP) model rule for smaller-scale electric generating resources. The RAP, a non-profit organization formed in 1992 by former utility regulators, provides research, analysis, and educational assistance to public officials on electric utility regulation. The RAP has developed a model rule for smaller-scale electric generation facilities (see Regulatory Assistance Project Issues Letter "Model Regulations for the Output of Specified Air Emissions from Smaller-Scale Electric Generation Resources," July 2003). Connecticut adopted a regulation for smaller-scale electric generators that is based on the RAP model rule. The Connecticut rule became effective on January 1, 2005. Massachusetts has proposed and is in the process of finalizing a rule for smaller-scale electric generators based on the RAP model rule.

Maine's Chapter 148 includes both the first and second phase of emission standards outlined in the RAP model rule. Maine adopted the NO_X standards for ozone attainment areas outlined in the RAP model rule. The RAP model rule includes a third, more stringent, phase of standards as well as NO_X standards for non-attainment areas, which Maine did not include in Chapter 148. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a memorandum dated March 1, 2005, entitled "Technical Support Document—Maine—Smaller-Scale Electric Generating Resources Regulation" (TSD). The TSD and Maine's Chapter 148 are available in the docket supporting this action.

Maine is not submitting Chapter 148 to meet any requirements under the Clean Air Act. EPA is approving Chapter 148 because it will strengthen Maine's SIP. If Maine elects to rely on Chapter 148 in a future control strategy SIP (*e.g.*, a rate of progress plan or an attainment demonstration), the rule will become a control measure required under the Clean Air Act for purposes of that control strategy SIP.

D. What Is the Process for EPA To Approve This SIP Revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective July 25, 2005 without further notice unless the EPA receives adverse comments by June 27, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 25, 2005, and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving Maine's Chapter 148, "Emission Standards for Smaller-Scale Electric Generating Resources" and incorporating this regulation into the Maine SIP.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 9, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of 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 U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(55) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(55) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 29, 2004.

(i) Incorporation by reference.

(A) Chapter 148 of the Maine Department of Environmental Protection Regulations, "Emissions from Smaller-Scale Electric Generating Resources" effective in the State of Maine on August 9, 2004.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.1031, Table 52.1031 is amended by adding a new state citation, 148, to read as follows:

§ 52.1031 EPA—approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
*	*	*	*	*	*
148	Emissions from Smaller-Scale Electric Generating Resources.	7/15/04	5/26/05	[Insert *FR* citation from published date]	(c)(55).
*	*	*	*	*	*

Note. —1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–10508 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0008; FRL–7917–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eleven Individual Sources; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to incomplete information contained in the Commonwealth's submission, EPA is withdrawing an individual source that was included as part of a direct final rule to approve Pennsylvania's SIP pertaining to source-specific volatile organic compounds (VOC) and nitrogen oxides (NO_X) RACT determinations for eleven individual sources located in Pennsylvania. The direct final rule was published on March 31, 2005 (70 FR 16416). Subsequently, EPA is withdrawing the one provision of that direct final rule.

DATES: The addition of the entry for Dart Container Corporation in 40 CFR 52.2020 (d)(1) published at 70 FR 16419 is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186 , or by e-mail at *devose.pauline@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the March 31, 2005, **Federal Register** (70 FR 16416). EPA is withdrawing only the provision for one individual source, namely, Dart Container Corporation, Upper Leacock Township, Lancaster County, Pennsylvania. The other actions in the March 31, 2005, **Federal Register** are not affected.

List of Subjects in 40 CFR Part 52

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

Dated: May 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entry for Dart Container Corporation in 40 CFR 52.2020(d)(1) published at 70 FR 16419 is withdrawn as of May 26, 2005.

[FR Doc. 05–10511 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0011; FRL–7917–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, EPA is withdrawing the direct final rule to approve Pennsylvania's State Implementation Plan (SIP) revision. The SIP revision pertains to source-specific nitrogen oxides (NO_X) reasonably available control technology (RACT) determination for five individual sources located in Pennsylvania. In the direct final rule published on March 30, 2005 (70 FR 16115), we stated that if we received adverse comments by April 29, 2005, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on March 30, 2005 (70 FR 16203). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of May 26, 2005.

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

List of Subjects in 40 CFR Part 52

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

Dated: May 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entries for R. H. Sheppard Co. Inc.; Wheatland Tube Company; Transcontinental Gas Pipeline Corporation (OP–53–0006); Transcontinental Gas Pipeline Corporation (OP–19–0004); and, Transcontinental Gas Pipeline Corporation (PA–41–0005A) in 40 CFR 52.2020(d)(1) published at 70 FR 16118 are withdrawn as of May 26, 2005.

[FR Doc. 05–10512 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0007; FRL–7917–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing a paragraph that was included as part of a direct final rule to approve reasonable available control technology (RACT) to limit nitrogen oxides (NO_X) emissions from fifteen individual sources located in Pennsylvania. In the direct final rule published on March 31, 2005 (70 FR 16423), we stated that if we received adverse comments by May 2, 2005, the rule would be withdrawn and would not take effect. EPA subsequently received an adverse comment on one provision of that direct final rule and is withdrawing that provision. EPA will address the comment received in a subsequent final action based upon the proposed action also published on March 31, 2005 (70 FR 16471). EPA will not institute a second comment period on this action.

DATES: The addition of the entry for Koppers Industry, Inc. in 40 CFR 52.2020(d)(1) published at 70 FR 16426 is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, by phone at (215) 814–2113 or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the March 31, 2005, **Federal Register** (70 FR 16423). EPA received adverse comments only for one source, namely, Koppers Industries, Inc. located in Lycoming County, PA. The other actions in the March 31, 2005, **Federal Register** are not affected.

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 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entry of Koppers Industry, Inc. in 40 CFR 52.2020(d)(1) published at 70 FR 16426 is withdrawn as May 26, 2005.

[FR Doc. 05–10513 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0006; FRL–7917–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from three individual sources located in Pennsylvania. In the direct final rule published on April 1, 2005 (70 FR 16717), we stated that if we received adverse comment by May 2, 2005, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment on April 1, 2005. EPA

will address the comment received in a subsequent final action based upon the proposed action also published on April 1, 2005 (70 FR 16784). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, *robertson.lakeshia@epa.gov.*

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 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entries for Salem Tube, Inc.; Dominion Trans, Inc.; and, SGL Carbon Corporation in 40 CFR 52.2020(d)(1) published at 70 FR 16720 are withdrawn as of May 26, 2005.

[FR Doc. 05–10514 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0002; FRL–7917–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve reasonable available control technology (RACT) to limit volatile organic compound (VOC) and nitrogen oxides (NO_X) emissions from three individual sources located in Pennsylvania. In the direct final rule published on April 4, 2005 (70 FR 16955), we stated that if we received adverse comment by May 4, 2005, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment on April 16, 2005. EPA will address the comment received in a subsequent final action based upon the proposed action also published on April 4, 2005 (70 FR 17027). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or e-mail at *caprio.amy@epa.gov.*

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 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entries for Waste Management Disposal Services of Pennsylvania Inc. (Pottstown Landfill); Waste Management Disposal Services of PA, Inc.; and, Armstrong World Industries, Inc. in 40 CFR 52.2020(d)(1) published at 70 FR 16957 are withdrawn as of May 26, 2005.

[FR Doc. 05–10515 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

[Docket No. OST–2005–20434]

Negotiated Rulemaking Advisory Commiteee on Minimum Standards for Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of termination of advisory committee.

SUMMARY: This document terminates the Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards. The reason for the termination is that the recently-enacted Real ID Act repeals section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provided the authority for the negotiated rulemaking on this subject.

EFFECTIVE DATE: The advisory committee is terminated as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at 202–366–9310 (*bob.ashby@dot.gov*); Department of Transportation, 400 7th Street, SW., Washington DC, 20590, room 10424.

SUPPLEMENTARY INFORMATION: Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 mandated the issuance of minimum standards for state-issued driver's licenses and personal identification cards (Section 7212) that will be accepted by Federal agencies for official purposes. This statute directed the Department of Transportation to issue rules with the assistance of a negotiated rulemaking advisory committee, composed of representatives of the Departments of Transportation and Homeland Security, state agencies that issue driver's licenses, state elected officials, and other interested parties. The Department formed such an advisory committee, which met on April 19–21, 2005.

Recently, President Bush signed legislation enacting the "Real ID Act," section 206 of which repeals section 7212. As provided in the charter for the advisory committee, the committee and the negotiated rulemaking process of which it is a key part terminate upon enactment of legislation repealing section 7212. Consequently, the Department in this notice announces the termination of the committee and the negotiated rulemaking. As a result, meetings of the committee that had been scheduled during May–July 2005 will not take place.

Participants in the advisory committee process demonstrated a commitment of time, energy, expertise, and good will that is very much to their credit. The Department wishes to express its sincere gratitude to these public-spirited organizations and individuals.

Issued this 19th day of May, 2005, at Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05–10549 Filed 5–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 224

[Docket No. FRA–1999–6689, Notice No. 5]

RIN 2130–AB41

Reflectorization of Rail Freight Rolling Stock

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; stay of effectiveness.

SUMMARY: This document stays the effectiveness 49 CFR part 224, which mandates the reflectorization of certain freight rolling stock. Part 224 was established by final rule on January 3,

2005, and took effect on March 4, 2005. FRA received three petitions for reconsideration in response to the final rule. Accordingly, in order to allow FRA appropriate time to respond to the petitions for reconsideration, this document stays the effectiveness of part 224 until further notice is published in the **Federal Register**.

DATES: As of May 24, 2005, the effectiveness of 49 CFR part 224 is stayed until further notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Tom Blankenship, Mechanical Engineer, Office of Safety, FRA, 1120 Vermont Ave., NW., Mailstop 25, Washington, DC 20590 (telephone: 202–493–6446); Lucinda Henriksen, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., Mailstop 10, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: On January 3, 2005, FRA published a final rule adding a new part to the CFR mandating the reflectorization of certain freight rolling stock (freight cars and locomotives). See 70 FR 144. The effective date of this part, 49 CFR part 224, was March 4, 2005. FRA received three petitions for reconsideration in response to the final rule. Accordingly, in order to allow FRA appropriate time to respond to the petitions for reconsideration, this document stays the effectiveness of part 224 until further notice is published in the **Federal Register**. Therefore, any requirements imposed by part 224 need not be complied with until a document is published in the **Federal Register** announcing the date when part 224 will be effective. That date will be at least 60 days after the publication of such document, in order to provide sufficient notice to interested parties.

This action is being taken under the authority of 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461; and 49 CFR 1.49.

List of Subjects in 49 CFR Part 224

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, and Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA stays part 224 of chapter II, subtitle B, of title 49, Code of Federal Regulations.

Issued in Washington, DC, on May 24, 2005.

Robert D. Jamison,

Acting Administrator.

[FR Doc. 05–10633 Filed 5–25–05; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 70, No. 101
Thursday, May 26, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 724

RIN 3206–AK38

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On February 28, 2005, the Office of Personnel Management (OPM) issued proposed rules regarding the notification and training requirements of Title II of the No FEAR Act (70 FR 9544). The proposed rule contained a 60-day comment period. Upon further consideration, OPM has decided to reopen the initial comment period until June 28, 2005.

DATES: Comments must be received on or before June 28, 2005.

ADDRESSES: Send or deliver written comments to Ana A. Mazzi, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC, 20415; by FAX at (202) 606–2613; or by e-mail at *NoFEAR@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or be e-mail at *NoFEAR@opm.gov*.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–10483 Filed 5–25–05; 8:45 am]

BILLING CODE 6325–48–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106736–00]

RIN 1545–BE67

Assumption of Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations relating to the assumption of liabilities under section 752 of the Internal Revenue Code (Code). Those temporary regulations contain rules related to the assumption of certain liabilities under section 358(h). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 24, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106736–00), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–106736–00).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Doug Bates, at (202) 622–7550; concerning submissions of comments and/or requests for a public hearing, Sonya Cruse, (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 358(h)(1). The temporary regulations make unavailable the exception to section 358(h)(1) that is set forth in section 358(h)(2)(B) (which applies where substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the only impact of the regulations is to require taxpayers to calculate the basis of stock received in certain transactions more accurately. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Requests for a Public Hearing

Before these regulations are adopted as final regulations, consideration will be given to any written comments (a signed original with 8 copies) or electronic comments that are submitted timely to the IRS. All comments will be made available for pubic inspection and copying. A public hearing may be scheduled. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Douglas Bates, Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.358–5 also issued under 26 U.S.C. 358(h)(2). * * *

Par. 2. Section 1.358–5 is added to read as follows:

§ 1.358–5 Special rules for assumption of liabilities.

[The text of proposed § 1.358–5 is the same as the text of § 1.358–5T published elsewhere in this issue of the **Federal Register**]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10265 Filed 5–23–05; 11:17 am]

BILLING CODE 4830–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Dockets No. 2004–1; 2004–2]

RIN 3014–AA11

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels; Large Vessels; Small Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Availability of draft guidelines; advance notice of proposed rulemaking; notice of hearing.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket and on its Web site for public review and comment draft guidelines which address accessibility to and in newly constructed or altered passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. The Access Board has also issued an Advance Notice of Proposed Rulemaking which addresses newly constructed or altered passenger vessels which carry 150 or fewer passengers or 49 or fewer overnight passengers. The Access Board will hold two public hearings on June 24, 2005, and July 25, 2005, at the times and locations noted below.

DATES: The Access Board will hold two hearings on the draft guidelines and the Advance Notice of Proposed Rulemaking on Friday June 24, 2005, from 2 p.m. until 5 p.m. and on Monday, July 25, 2005, from 10 a.m. until noon.

ADDRESSES: The hearing on June 24, 2005, will be held at the Beverly Hilton, 9876 Wilshire Boulevard, Beverly Hills, CA. The hearing on July 25, 2005, will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (voice); (202) 272–0082 (TTY); electronic mail address: *pvag@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Availability of Draft Guidelines for Large Vessels

On November 26, 2004, the Architectural and Transportation Barriers Compliance Board (Access Board) issued a notice of availability of draft guidelines. The draft guidelines address accessibility to and in newly constructed or altered passenger vessels covered by the Americans with Disabilities Act, which are permitted to carry more than 150 passengers or more than 49 overnight passengers (69 FR 69244; November 26, 2004). The notice of availability and the draft guidelines along with supplementary information have been placed in the rulemaking docket and on the Board's Web site (*http://www.access-board.gov/pvaac/noa.htm*). The Board is soliciting comments on the draft guidelines and will issue a notice of proposed rulemaking (NPRM) following a review of comments received. The deadline for commenting on the draft guidelines was extended by a subsequent notice until July 28, 2005 (70 FR 14435, March 22, 2005).

Advance Notice of Proposed Rulemaking for Small Vessels

Also on November 26, 2004, the Access Board published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (69 FR 69245; November 26, 2004). The ANPRM addresses the development of accessibility guidelines for newly constructed or altered passenger vessels covered by the Americans with Disabilities Act, which carry 150 or fewer passengers or 49 or fewer overnight passengers. The ANPRM is also on the Board's Web site at *http://www.access-board.gov/pvaac/anprm.htm.* The deadline for commenting on ANPRM was extended by a subsequent notice until July 28, 2005 (70 FR 14435, March 22, 2005.)

Regulatory Assessment

The Board has also drafted a plan for conducting a regulatory assessment of the passenger vessels guidelines. The plan provides for evaluating the potential impacts of the guidelines on new construction of passenger vessels through case studies, and outlines some methods for examining the impacts of the guidelines on alterations to passenger vessels. The plan is available for public review on the Board's Web site and the Board invites comment on the plan (*http://www.access-board.gov/pvaac/assess-plan.htm*).

Public Hearings

The Board held an initial public hearing on the draft guidelines for large vessels and the ANPRM for small vessels on January 10, 2005, in Washington DC. The Board will hold two hearings on June 24, 2005, and July 25, 2005, to give the public additional opportunities to provide input on the Board's draft guidelines. Persons wishing to testify are encouraged to contact the Access Board at (202) 272–0012 (voice) or (202) 272–0082 (TTY) to pre-register to attend the hearing. The hearings will be accessible to persons with disabilities. Sign language interpreters, real-time captioning and an assistive listening system will be available. Persons attending the hearings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Department of Transportation

The Department of Transportation (DOT) is conducting a separate rulemaking to adopt the Access Board's guidelines as accessibility standards for passenger vessels covered by the ADA. The DOT rulemaking will also address operational issues related to passenger vessels. DOT issued a separate Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on November 26, 2004 (69 FR 69246; November 26, 2004).

Availability of Copies and Electronic Access

Single copies of the passenger vessels rulemaking (Availability of Draft Guidelines, Draft Guidelines and Supplementary Information, Draft Plan for Regulatory Assessment, and ANPRM on Access to and in Small Passenger

Vessels) may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1 and requesting publication S–45. Please record your name, address, telephone number and publication code S–45. Persons using a TTY should call (202) 272–0082. Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). The documents are also available on the Board's Web site (*http://www.access-board.gov*).

Lawrence W. Roffee,

Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 05–10581 Filed 5–25–05; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–TN–0001, R04–OAR–2004–GA–0004–200414; FRL–7917–7]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee and Georgia; Attainment Demonstrations for the Chattanooga, Nashville, and Tri-Cities Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Tennessee and Georgia State Implementation Plans (SIPs) respectively submitted by the State of Tennessee through the Department of Environment and Conservation on December 29, 2004, and by the State of Georgia through the Environmental Protection Division on December 31, 2004. These revisions are submitted pursuant to the Early Action Compact (EAC) protocol [1] and will result in emission reductions needed to attain and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) in the Chattanooga, Nashville, and Tri-Cities EAC areas. EPA is proposing approval of the photochemical modeling which supports the attainment demonstration of the 8-hour ozone standard within these areas. The proposed revisions further incorporate the local control measures of the Chattanooga, Nashville, and Tri-Cities EAC area agreements into the SIP. EPA is also proposing revisions to the Vehicle Inspection and Maintenance (I/M), Stage I Vapor Recovery and Motor Vehicle Tampering Tennessee SIP regulations. EPA is proposing to approve revisions to Georgia's rules for Stage I Vapor Recovery and open burning.

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–TN–0001 for any comments regarding the Tennessee submittal or ID No. R04–OAR–2004–GA–0004 for any comments regarding the Georgia submittal, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/* 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.

3. *E-mail: martin.scott@epa.gov,* or *hoffman.annemarie@epa.gov.*

4. *Fax:* 404–562–9019.

5. *Mail:* "R04–OAR–2005–TN–0001"or "R04–OAR–2004–GA–0004", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier:* Deliver your comments to: Anne Marie Hoffman, or Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–TN–0001 for comments regarding the Tennessee submittal or to R04–OAR–2004–GA–0004 for any comments regarding the Georgia submittal. 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://docket.epa.gov/rmepub/,* 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site 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 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 electronic docket are listed in the 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 hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Martin, or Anne Marie Hoffman,

[1] The EAC Protocol can be found at *http://www.epa.gov/air/eac/* and in the Regional Materials Edocket (RME) I.D. "RO4–OAR–2005–TN–0001, R04–OAR–2004–GA–0004 *see* **ADDRESSES** section of this notice for further information on RME.

Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone for Mr. Martin is (404) 562–9036, and the telephone number for Ms. Hoffman is (404) 562–9074. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov*. Ms. Hoffman can also be reached via electronic mail at *hoffman.annemarie@epa.gov*.

SUPPLEMENTARY INFORMATION: The use of "we," "our," and "us" refers to EPA.

Table of Contents

I. What Action Are We Proposing?

Today we are proposing to approve revisions to the Tennessee and Georgia SIPs under sections 110 and 116 of the Clean Air Act (CAA or the Act). These revisions demonstrate attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm),[2] within the Chattanooga, Nashville and Tri-Cities EAC areas (The Tennessee and Georgia EAC areas) by 2007, and incorporate the measures developed by these EACs into the Tennessee and Georgia SIPs. The EACs are voluntary agreements between the States, local governments and EPA. The intent of these agreements is to reduce ozone pollution and thereby attain and maintain the 8-hour ozone standard by 2007, sooner than required by the CAA for areas designated nonattainment. Section VII of this rulemaking describes the control measures that will be implemented within the Tennessee and Georgia EAC areas.

II. What Is a SIP?

The "SIP" is the State Implementation Plan required by Section 110 of the CAA and its implementing regulations. In essence, 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. Once included in the SIP, these regulations, strategies, and analyses are federally enforceable by EPA. The NAAQS 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. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations. Discussed in greater detail below, SIP revisions relating to attainment of the 8-hour ozone standard submitted by Tennessee and Georgia on December 29, and December 31, 2004, are now being proposed for inclusion into the SIPs.

III. What Is Ozone and the Purpose of the 8-hour Ozone Standard?

Ozone is formed by a series of chemical reactions involving nitrogen oxides (NO_X), the result of combustion processes, and reactive organic gases, also termed volatile organic compounds (VOCs). NO_X and VOCs are emitted into the air through many sources such as vehicles, power plants and other industrial facilities. Ozone and its precursors have many adverse effects on human health and can cause the following: Irritation of the respiratory system, reduction of lung function (making it more difficult to breathe), aggravation of asthma, inflammation and damage to the lining of the lungs, and an increase in the risk of hospital admissions and doctor visits for respiratory problems. In order to reduce ozone it is necessary to reduce NO_X and VOCs, ozone precursors. Consistent with the Act, ozone reductions are achieved by establishing NAAQS, such as the 8-hour ozone standard, and implementing the measures necessary to reduce ozone and its precursors. In the April 30, 2004, (69 FR 23858), **Federal Register** document entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates," EPA designated every county in the United States unclassifiable/attainment or nonattainment. Generally, when areas are designated nonattainment, they must put measures in place that will control and maintain ozone at healthy levels; areas designated as attainment must also develop maintenance plans to ensure ozone concentrations do not increase over time to unhealthy levels. The EAC program involves a commitment by areas close to attainment of the ozone standard to achieve clean air sooner. The areas' commitment is demonstrated by implementing control measures to achieve attainment earlier than mandated by the 8-hour ozone NAAQS and the Clean Air Act. The EAC areas that were designated nonattainment, but were able to meet the requirements of the EAC Protocol currently have a deferral of their nonattainment designation until September 30, 2005.

IV. What Is an EAC?

An "EAC" is an "Early Action Compact." This is an agreement between a State, local governments, and EPA to implement measures not necessarily required by the Act in order to achieve cleaner air as soon as possible. Communities close to or exceeding the 8-hour ozone standard that have elected to enter into an EAC have started reducing air pollution at least two years sooner than required by the Act. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the Act. 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 one-hour ozone standard will be revoked as of June 15, 2005, in most areas. It will not be revoked for previous 1-hour nonattainment areas that are 8-hour EAC areas, such as the Nashville, Tennessee and Greensboro-Winston Salem-High Point, North Carolina 1-hour area (the Triad 8-hour EAC area).[3] These areas will continue to implement transportation conformity requirements related to the 1-hour ozone standard. The 1-hour ozone transportation conformity requirements will no longer be in effect one year after the 8-hour ozone attainment designation if the areas are successful in achieving attainment through implementation of the EAC. If any EAC area is unsuccessful in attaining the 8-hour ozone NAAQS through the EAC process, it will be subject to the 8-hour ozone transportation conformity requirements one year after the nonattainment designation becomes effective.

The initial choice to enter into a EAC was voluntary on behalf of the local officials and State air quality officials. EPA believes that early planning and implementation of control measures that

[2] The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

[3] Notably, the counties included in the 8-hour EAC area may not directly correspond with all the counties included in the previous 1-hour area for the similar geographic area.

improve air quality will likely accelerate protection of public health. The EAC program allows participating State and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using local pollution control measures in addition to federally mandated measures. While the choice of entering into an EAC was voluntary, all measures adopted as part of the EAC are being proposed to be incorporated into the SIP and will be mandatory and federally enforceable.

In Region 4, EPA initially received 22 requests to enter into EACs in December 2002, including 100 counties in four states. Currently, there are 17 areas and 85 counties included in the EAC program in four states. Of those 17, only eight areas received a deferral of their nonattainment designation. Five of the eight areas that have a deferred nonattainment designation are now attaining the 8-hour ozone standard and modeling attainment of that into the future. Consistent with EPA's EAC Protocol, 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 CAA deadline for all other areas not meeting the standard. The EAC Protocol further requires communities to develop and implement air pollution control strategies, account for emissions growth and demonstrate attainment by 2007 and maintenance for at least five years of the 8-hour ozone standard. Greater details of the EAC program are explained in EPA's December 16, 2003, (68 FR 70108) proposed **Federal Register** document entitled "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas."

Tennessee submitted an EAC for the Chattanooga area, the Nashville area, and the Tri-Cities area, on December 30, 2002. The State of Georgia submitted materials supporting the Chattanooga EAC on December 24, 2002. These were signed by representatives of the local communities, State air quality officials and the Regional Administrator. The Tennessee and Georgia EAC area designations are discussed further in Section V of today's rulemaking. To date, the Tennessee and Georgia EAC areas have met all EAC milestones and, as long as EAC areas continue to meet the agreed upon milestones, the nonattainment designations will be deferred until April 15, 2008. At that time EAC areas with air quality monitoring data showing attainment for the years 2005–2007 and that have met all compact milestones will be designated attainment.

V. What Are the Tennessee and Georgia EAC Areas and Their Respective 8-hour Ozone Designations?

In the April 30, 2004, (69 FR 23858) **Federal Register** document entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates," the EPA designated every area in the United States unclassifiable/attainment or nonattainment. The EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour ozone standard (and attaining the 1-hour ozone standard), but continue to meet the compact milestones. Details of this deferral were published in the April 30, 2004, (69 FR 23858) **Federal Register** document. The Tennessee and Georgia EAC area designations are discussed further in Section V of today's rulemaking.

In the April 30, 2004, (69 FR 23858) rulemaking, the EPA designated counties within the EAC areas that were violating the 8-hour NAAQS based on 2001–2003 air quality monitoring data as nonattainment-deferred. EPA designated five counties within the Nashville EAC area as nonattainment-deferred and three counties as unclassifiable/attainment for the 8-hour ozone standard (*See* Table 1). In the same document, EPA designated two counties within the Tri-Cities EAC area as nonattainment-deferred and four counties as unclassifiable/attainment for the 8-hour ozone standard (*See* Table 1). In the same document, EPA found Chattanooga's report submitted to meet the March 31, 2004, EAC milestone was insufficient. EPA therefore designated Hamilton County, Tennessee and Catoosa and Walker Counties, Georgia as nonattainment and the two remaining counties as unclassifiable/attainment. Due to extensive efforts on the part of the local governments and State Agencies consistent with requirements for EAC areas, EPA reinstated the Chattanooga area into the EAC on June 18, 2004, (69 FR 34080) and designated Hamilton County, Tennessee and Catoosa an Walker Counties, Georgia as nonattainment-deferred (*See* Table 1).

TABLE 1.—TENNESSEE AND GEORGIA EAC 8-HOUR OZONE DESIGNATIONS

EAC areas	EAC 8-hour Ozone designation
Chattanooga EAC area:	
Hamilton County, TN	Nonattainment-deferred.
Meigs County, TN	Nonattainment-deferred.
Marion County, TN	Unclassifiable/Attainment.
Walker County, GA	Unclassifiable/Attainment.
Catoosa County, GA	Nonattainment-deferred.
Nashville EAC area:	
Davidson County	Nonattainment-deferred.
Rutherford County	Nonattainment-deferred.
Williamson County	Nonattainment-deferred.
Wilson County	Nonattainment-deferred.
Sumner County	Nonattainment-deferred.
Robertson County	Unclassifiable/Attainment.
Cheatham County	Unclassifiable/Attainment.
Dickson County	Unclassifiable/Attainment.
Tri-Cities EAC area:	
Sullivan County	Nonattainment-deferred.
Hawkins County	Nonattainment-deferred.
Washington County	Unclassifiable/Attainment.
Unicoi County	Unclassifiable/Attainment.
Carter County	Unclassifiable/Attainment.
Johnson County	Unclassifiable/Attainment.

To date, the Tennessee and Georgia EAC areas have met all EAC milestones and, as long as EAC areas continue to meet the agreed upon milestones, the impact of the nonattainment designations will be deferred until April 15, 2008. At that time, EPA will evaluate the 8-hour ozone designations for these areas.

VI. How Is Attainment Demonstrated for the 8-Hour Ozone Standard With a Photochemical Model?

In developing its SIP, an area will typically evaluate necessary control measures using modeling programs to determine how that area can meet and maintain the NAAQS. This process is no different for EAC areas which used modeling and screening tests to evaluate attainment and maintenance of the 8-hour ozone standard. The attainment tests use ambient air quality monitored design values with model-generated ozone concentration data. The test is applied at each monitor in the area as well as applicable unmonitored modeling sites in the EAC area. A future year design value is developed by multiplying the ratio of the future year to current year model-predicted 8-hour daily maximum ozone concentrations by a current design value. The current design value is developed from air quality monitored data. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). If modeled predicted future site-specific design values are less than 0.085 ppm at each monitor site, the test is passed.[4]

A. How Was Attainment Demonstrated Through the Tennessee EAC Modeling?

The Tennessee modeling was developed consistent with the EPA draft modeling guidance and EAC protocol guidance that was available when the modeling was conducted.[5] The air quality modeled concentrations were developed using the variable-grid Urban Airshed Model, Version 1.5 (UAM–V5), a regional- and urban-scale, nested-grid photochemical air quality model. Areas with 8-hour ozone SIPs due in 2007 are expected to use the 2002 inventory as mentioned in the policy memo ("2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$, and Regional Haze Programs" by Lydia N. Wegman dated November 18, 2002). However, for EAC SIPs submitted in 2004, EPA will accept another year provided the data represents recent conditions. A current year of 2001 was used by Tennessee for the modeling because it was the most representative year with the most complete data available.

The attainment test is passed for all EAC area monitors for the future years of 2007, 2012 and 2017 for the Chattanooga, Nashville and Tri-Cities EAC areas using current design values from 2000–2002. The future-predicted design values using the Tennessee modeling are presented in Table 2.

TABLE 2.—TENNESSEE EAC FUTURE DESIGN VALUES (PPB)

Area/Monitor	2007	2012	2017
Chattanooga EAC Area			
Sequoyah	84	80	77
Chattanooga	84	79	75
Meigs County	84	80	77
Nashville EAC Area			
Rockland Road	81	79	75
East Nashville Health Center	66	64	61
Percy Priest Dam	75	73	70
Rutherford County	82	79	75
Wright's Farm	82	79	75
Fairview	80	77	74
Lebanon	76	72	69
Tri-Cities EAC Area			
Kingsport	84	81	80
Blountville	83	80	78

B. How Was Supplemental Modeling Developed by Georgia Used in the Demonstration for Attainment?

The Chattanooga EAC is a multi-state EAC area and includes counties in Tennessee and Georgia. An attainment demonstration was independently developed for the Chattanooga EAC area by the states of Tennessee and Georgia. The Georgia modeling was developed consistent with existing EPA modeling and EAC protocol guidance. The air quality modeled concentrations were developed using the Community Multiscale Air Quality (CMAQ), a regional- and urban-scale, nested-grid photochemical air quality model. A current year of 2000 was modeled for the attainment test. The attainment test is passed for all EAC area monitors for the future years of 2007 and 2012 for the Chattanooga EAC area using current design values from 1999–2001. A comparison of the future-predicted

[4] Although the 8-hour ozone standard is 0.08 ppm, monitored values less than 0.085 are rounded down to 0.08 whereas monitored values equal to or greater than 0.085 are rounded up, and considered to be an exceedance of the standard. The 8-hour ozone standard can also be expressed in parts per billion and EPA often refers to monitors meeting the standard if they monitor values less than 85 ppb.

[5] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 8-hour ozone NAAQS. See U.S. EPA, (1999), Draft Guideline on the Use of Models and Other Analysis in Attainment Demonstrations for the 8-Hour Ozone NAAQS, EPA–454/R–99–00413, (May 1999). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "DRAFT8HR").

EPA, June, 2002. "Protocol for Early Action Compacts Designed to Achieve and Maintain the 8–Hour Ozone Standard". Located at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

"Appendix W to 40 CFR Part 51: Guideline on Air Quality Models." Located at *http://www.epa.gov/scram001/* (file name: "Appendix W")

design values as independently developed in the Georgia and Tennessee modeling is presented in Table 3.

TABLE 3.—CHATTANOOGA FUTURE DESIGN VALUES (PPB) FROM TENNESSEE AND GEORGIA

Monitor	2007		2012	
	Tennessee	Georgia	Tennessee	Georgia
Sequoyah	84	81	80	79
Chattanooga	84	81	79	78
Meigs County	84	81	80	78

C. Supplemental Analyses Used in the Technical Demonstration for Attainment?

According to the 1999 draft EPA 8-hour ozone modeling guidance, a weight of evidence (WOE) analysis is optional if attainment is modeled through photochemical modeling. If it is submitted, WOE provides additional corroborative analyses to support and strengthen the photochemical modeling. The WOE analyses are particularly useful in verifying the attainment demonstration if the photochemical modeling results are within a few parts per million of the 8-hour standard. The State of Tennessee chose to submit a weight of evidence analysis to support the attainment modeling results. The WOE results varied for each EAC area but were, overall, supportive of the modeling conclusions for attainment. Therefore, WOE strengthens the photochemical modeling analysis. The WOE is described in detail and for each EAC area in the technical support document (TSD) for this document. Briefly, the WOE elements in the SIP submittal include:

1. An additional application of the modeled attainment test using the 2001–2003 data for the current design values. Using a lower ambient air quality current design value results in all monitors indicating attainment with design values well below 84 ppb.

2. A sensitivity analysis on the radius of influence to use around the monitor to determine the modeling concentrations to use in the attainment tests. Attainment was indicated at all monitors in the Tri-Cities and Nashville area.

3. An 8-hour ozone exceedance exposure analysis to determine the change in difference of 8-hour ozone predictions > 85 ppb. The percent reduction improvement is presented in Table 4.

4. Three analysis items as defined in the draft EPA 8-hour ozone modeling guidance were analyzed to determine the percent reduction improvement: (1) Change in number of grid cell hours with 1-hour ozone > 84 ppb, (2) change in number of grid cell hours with 1-hour ozone > 84 ppb, and (3) change in difference of 1-hour ozone predictions > 84 ppb. The results for the three metrics are presented in Table 4. Improvement ranging from 51 to 78 percent is shown for each analysis item for all three areas.

5. Applying the modeled attainment test by omitting episode days based on model performance and using only episode days with observed exceedance. Attainment was indicated with future design values similar and sometimes less than the future design values in Table 3.

TABLE 4.—WEIGHT OF EVIDENCE ANALYSES RESULTS (PERCENT)

Analysis Items	Percent reduction for each EAC area		
	Chattanooga	Nashville	Tri-Cities
Change in difference of 8-hour ozone predictions > 85 ppb	78	73	71
Change in number of grid cell hours with 1-hour ozone concentrations > 84 ppb	73	64	69
Change in number of grid cell hours with 8-hour ozone concentrations > 85 ppb	67	59	51
Change in difference of 1-hour ozone predictions > 84 ppb	63	55	55

The WOE analysis supports the conclusions of attainment presented in section IV.A. Improvements in air quality are indicated in the WOE analyses. The sensitivity analyses on the application of the model attainment test further support attainment for the EAC areas. Additional details by EAC areas for the WOE analysis is included in the TSD for this document.

D. What Is the Maintenance for Growth Plan for the EAC Areas?

The Tennessee SIP included a comprehensive maintenance plan for the EAC areas that met the minimum requirements of the EAC protocol. The EAC maintenance plan includes the following:

1. An attainment demonstration for the 2007–2017 period. Future design values developed through modeling for 2007, 2012 and 2017 are below 85 ppb at all monitors in the EAC areas.

2. A commitment for an interim evaluation in 2008.

3. A commitment to annually track stationary and highway mobile source emissions starting in 2005. Provides triggers (emissions growth thresholds and rates) and actions (air quality analyses, modeling and adopting additional controls) to be performed to address emission growth.

4. Based on the tracking the growth of stationary and onroad mobile sources, Tennessee commits to adopt and implement additional control measures, as needed from their analyses, as expeditiously as practicable, but no later than two years from meeting a triggering condition.

5. A timeline of actions and submittals for the maintenance plan from December 2004 to December 2017:

- December 2004—Tennessee Division of Air Pollution Control (TDAPC) submits the EAC SIP covering both the attainment date of 2007 and the 10-year maintenance period through 2017
- December 2005—TDAPC and EAC areas fully implement EAC control measures
- December 2005—First annual emissions tracking report submitted for each EAC area

- December 2006—Second annual tracking report submitted for each EAC area
- December 2007—Ozone NAAQS attainment date
- December 2007—Third annual tracking report submitted for each EAC area
- April 2008—EPA designates areas for the 8-hour ozone standard
- December 2008—TDAPC completes evaluation of new emissions data and determines whether revised modeling analysis is required
- December 2008—Fourth annual tracking report submitted for each EAC area and continues each year thereafter through the end of the maintenance period.

The Georgia maintenance for growth plan was based on modeling the next five year period following the attainment year, *i.e.*, 2012. Developing modeled future design values for 2012 satisfies the five-year maintenance for growth demonstration requirements in the EAC protocol, *i.e.*, to assess attainment beyond 2007. The Georgia modeling indicates that maintenance of the attainment will occur beyond the December 31, 2007, attainment date. The EPA EAC protocol also states that the plan must detail a continuing planning process and discusses what this should involve. The Georgia EAC maintenance plan for the Chattanooga EAC area includes an attainment demonstration with future design values developed through modeling for 2007 and 2012 that are below 85 ppb at all EAC monitors. A commitment is included to track the EAC design value. If the design value increases beyond 0.084 ppm, the state will conduct a comprehensive study of air quality, emissions and modeling (as applicable) to determine if additional controls are needed. Additional controls will be developed, completed and submitted to EPA no later than 18 months of a determination based on the air quality trigger.

E. What Are EPA's Conclusions on the EAC Technical Demonstration for Attainment and Maintenance?

EPA's analysis indicates that the appropriate data and procedures were used to assess 8-hour ozone attainment for the Chattanooga, Nashville and Tri-Cities EAC areas. Although modeling demonstrations by Tennessee and Georgia were independently developed using different assumptions, inventories, episodes, and models, the results were consistent in modeling attainment. EPA's review indicates that the modeling from both states indicates attainment and maintenance of the 8-hour ozone NAAQS will be achieved. Finally, EPA believes that the combination of local scale modeling, WOE analyses and control strategies demonstrates attainment of the 8-hour ozone NAAQS for each Tennessee EAC area. Additional details of the Georgia and Tennessee EAC modeling are presented in the TSDs for the two state submittals.

VII. What Measures Are Included in This EAC SIP Submittal?

The Tennessee and Georgia submittals outline State and local measures that have been adopted and implemented, or will be implemented, by December 31, 2005, to attain and maintain the 8-hour ozone standard. These measures include controls on both stationary and mobile emissions sources. The Tennessee TSD discusses the results of photochemical modeling and technical analyses that support a demonstration of attainment of the 8-hour ozone standard by December 31, 2007, and maintenance of that standard through 2017. The Georgia TSD discusses the results of photochemical modeling and technical analyses that support a demonstration of attainment of the 8-hour ozone standard by December 31, 2007, and maintenance of that standard through 2012.

Statewide rule revisions adopted by the State of Tennessee to control emissions include an expansion of the Motor Vehicle Inspection and Maintenance (I/M) program, an expansion of the Stage 1 Gasoline Vapor Recovery program, and a Motor Vehicle Tampering provision. The Light-Duty Motor Vehicle Inspection and Maintenance revision broadens the scope of the existing rule to achieve additional mobile source emissions reductions. Significant changes require gasoline and diesel vehicles 1975 and newer with a gross vehicle weight rating up to 10,500 pounds or less to pass an emissions inspection prior to registration renewal. The Motor Vehicle Tampering revision reduces air pollution caused by tampering. Tampering may be defined as modifying, removing or rendering inoperable, any air pollution emission control device which results in an increase in emissions beyond established federal motor vehicle standards. The Volatile Organic Compounds—Stage I Vapor Recovery revision broadens the scope of the existing rule to achieve additional emissions reductions. Stage I Vapor Recovery is used during the refueling of gasoline storage tanks to reduce emissions of VOCs. Vapors in storage tanks that are displaced by incoming gasoline would be routed into the gasoline tank truck and therefore captured, instead of being vented to the atmosphere. The revision extends Stage I requirements for bulk gasoline plants and gasoline dispensing stations to additional Tennessee counties.

The State of Georgia submittal included two controls that will be implemented in the Chattanooga EAC area, an open burning ban during the ozone season and Stage I Vapor recovery. An open burning ban will be implemented at the state level in Catoosa and Walker Counties. The open burning ban will be in effect for the duration of the ozone season, which is May 1 through September 30. Stage I Vapor Recovery will be implemented at the state level in Catoosa and Walker Counties, Georgia in the Chattanooga area. Emissions reductions estimates from stage I vapor recovery in Walker and Catoosa Counties are estimated to be 0.81 tons per day (tpd) of VOCs in 2007 and 0.93 tpd of VOCs in 2012.

The majority of local EAC control measures being proposed for the SIP were not included in the modeling because they were not necessary to model attainment. These expected emission reductions further support the conclusion that the Tennessee and Georgia EAC areas will attain and maintain the 8-hour ozone standard in the future. Examples of these expected emission reductions not modeled are summarized in Table 5. For a complete list of local reductions see the 8-hour ozone attainment demonstrations for the Tennessee and Georgia EAC areas submitted to EPA on December 29, 2004, and December 31, 2004, found in the RME system as mentioned in the **ADDRESSES** section of today's rulemaking.

TABLE 5.—ADDITIONAL EAC LOCAL REDUCTIONS NOT MODELED

Strategy	Estimated reduction	
	NO_X (tons/day)	VOC (tons/day)
Chattanooga EAC		
Seasonal Open Burning Ban	1.04	3.15
Spare the Air Program	0.130	0.170
Nashville EACe		
Seasonal Open Burning Ban	0.111	0.423
Air Quality Action Day Measures	1.220	0.470
HOV Lane Expansion	0.017	0.021
Traffic Signal Synchronization	0.206	0.260

The modeled control measures detailed in Section VII meet the requirements of the EAC protocol: They are specific, quantified, permanent and will be federally enforceable when approved by EPA. In compliance with the next EAC program milestone, each of the control measures listed above, including any measures substituted by local areas, are scheduled to be implemented on or before December 31, 2005. The TSD contains additional information on each of these control measures, as well as information on numerous locally-implemented measures whose expected emission reductions have not been quantified. Local measures for the Tri-Cities EAC area are not included in Table 5 because the area did not quantify the local control measures which included an open burning ban, ozone action day program, and transportation emissions control measures.

Additionally, federal emission controls are projected to substantially reduce emissions of NO_X and VOCs in the newer fleet of vehicles and improved emission controls in major industrial, commercial and institutional facilities (point sources) are projected to significantly reduce emissions of NO_X. Using air quality models to anticipate the impact of growth, as well as the state-assisted and locally-implemented measures to reduce emissions, the States have projected that the EAC areas will be in attainment of the 8-hour ozone standard in 2007 and will remain in attainment through 2012 and 2017. The EPA has reviewed the modeling and emission projections and believes attainment is demonstrated. Therefore, EPA is proposing to approve the demonstration of attainment.

VIII. What Happens If the Area Does Not Meet the EAC Commitments or Milestones?

In the April 30, 2004 (69 FR 23858), Final Rulemaking, EPA designated counties within the Nashville and Tri-Cities EAC areas as nonattainment-deferred. Other counties within these EAC areas were designated attainment/unclassifiable. Also on April 30, 2004, EPA designated Hamilton County, Tennessee and Catoosa County, Georgia as nonattainment but reinstated the Chattanooga area into the EAC on June 18, 2004 (69 FR 34080), and reclassified those counties as nonattainment-deferred. In accordance with the April 30, 2004 (69 FR 23858), Final Rulemaking, the effective date of nonattainment for the EAC areas (*see* Table 1) have been deferred until September 30, 2005 (and will continued to be deferred so long as the areas meet the EAC milestones). The measures outlined in the Tennessee and Georgia SIP submittals provide every indication that the Tennessee and Georgia EAC areas will attain the 8-hour ozone standard by December 31, 2007, and complete each milestone and action agreed upon in the compact. However, if one milestone is missed, EPA will take action to propose and promulgate a finding of failure to meet the milestone, and withdraw the deferred effective date of the nonattainment designation.

IX. 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 will help ensure the three Tennessee and Georgia EAC areas comply with the 8-hour ozone standard by December 31, 2007, and maintenance of that standard through 2017 for Tennessee and 2012 for Georgia. We have reviewed the submittals and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol. The TSD contains detailed information concerning this rulemaking action.

Approving the EAC submittals into the SIP will also mean that measures and controls identified therein become federally enforceable and citizens within the EAC areas will start to benefit from reductions in air pollution earlier than the Clean Air Act deadlines. See section VII of this rulemaking action for the description of air pollution control measures. Finally, it means that EPA has determined that the State and local areas have continued to fulfill the milestones and obligations of the EAC Program. In a separate document, EPA will take action proposing to defer the effective date of nonattainment designation for these areas until December 31, 2006, so long as the areas continue to fulfill the EAC obligations, including semi-annual reporting requirements, implementation of the measures in the EAC submittal by December 31, 2005, and a progress assessment by June 30, 2006.

X. Proposed Action

EPA is proposing to approve the attainment demonstration in the Chattanooga area, Nashville area, and Tri-Cities area EACs and incorporate these into the Tennessee and Georgia SIPs. The modeling of ozone and ozone precursor emissions from sources in these three EAC areas demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007. These specified control strategies are consistent with the EAC program.

XI. 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, 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).

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, 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 (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 40 CFR Part 52

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

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

Dated: May 18, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–10472 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–NC–0005–200513; FRL–7917–8]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas

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 State of North Carolina through the Department of Environment and Natural Resources (DENR) on December 21, 2004. These revisions are submitted pursuant to the Early Action Compact (EAC) protocol [1] and will result in emission reductions needed to attain and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) in the Mountain, Unifour, Triad and Fayetteville EAC areas (the North Carolina EAC Areas). EPA is proposing approval of the photochemical modeling used by North Carolina to support the attainment demonstration of the 8-hour ozone standard within these areas. The proposed revisions further incorporate the local control measures of the Mountain, Unifour, Triad and Fayetteville EAC area agreements into the SIP.

DATES: Written comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–NC–0005, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/.* 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.

3. *E-mail: spann.jane@epa.gov.*

4. *Fax:* 404–562–9019.

5. *Mail:* "R04–OAR–2004–NC–0005", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier:* Deliver your comments to: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2004–NC–0005. 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://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 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

[1] The EAC Protocol can be found at *http://www.epa.gov/air/eac/* and in Regional Materials in Edocket (RME) ID No. R04–OAR–2004–NC–0005 (*see* the **ADDRESSES** section of this notice for further information on RME).

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 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 electronic docket are listed in the 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov*.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

Table of Contents

I. What Action Are We Proposing?

Today we are proposing to approve revisions to the North Carolina SIP under sections 110 and 116 of the Clean Air Act ("CAA" or "The Act"). These revisions demonstrate attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm),[2] within the Mountain, Unifour, Triad and Fayetteville EAC areas (the North Carolina EAC Areas) by 2007, and incorporate the control measures developed by these EACs into the North Carolina SIP. The North Carolina EACs are agreements between the North Carolina DENR, local governments and EPA. The intent of these agreements is to reduce ozone pollution and thereby attain and maintain the 8-hour ozone standard by 2007, sooner than required by CAA for areas designated nonattainment. Section VII of this rulemaking describes the control measures that will be implemented within the North Carolina EAC areas.

II. What Is a SIP?

The "SIP" is the State Implementation Plan required by section 110 of the CAA and its implementing regulations. In essence, 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 National Ambient Air Quality Standards (NAAQS). Once included in the SIP, these regulations, strategies, and analyses are federally enforceable by EPA. The NAAQS 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. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations. As is discussed in greater detail below, SIP revisions relating to attainment of the 8-hour ozone standard, submitted by North Carolina on December 21, 2004 are now being proposed.

[2] The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

III. What Is Ozone and the Purpose of the 8-hour Ozone Standard?

Ozone is formed by a series of chemical reactions involving nitrogen oxides (NO_X), the result of combustion processes, and reactive organic gases, also termed volatile organic compounds (VOCs). NO_X and VOCs are emitted into the air through many sources such as vehicles, power plants and other industrial facilities. Ozone and its precursors have many adverse effects on human health and can cause the following: irritation of the respiratory system, reduction of lung function (making it more difficult to breathe), aggravation of asthma, inflammation and damage to the lining of the lungs, and an increase in the risk of hospital admissions and doctor visits for respiratory problems. In order to reduce ozone it is necessary to reduce NO_X and VOCs, ozone precursors. Consistent with the Act, ozone reductions are achieved by establishing NAAQS, such as the 8-hour ozone standard, and implementing the measures necessary to reduce ozone and its precursors. In the April 30, 2004, (69 FR 23858), **Federal Register** document entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates," EPA designated every county in the United States unclassifiable/attainment or nonattainment. Generally, when areas are designated nonattainment, they must put measures in place that will control and maintain ozone concentrations at healthy levels; areas designated as attainment must also develop maintenance plans to ensure ozone concentrations do not increase over time to unhealthy levels. The EAC program involves a commitment by areas close to attainment of the ozone standard to achieve clean air sooner. The areas' commitment is demonstrated by implementing control measures to achieve attainment earlier than mandated by the 8-hour ozone NAAQS and the Clean Air Act. The EAC areas that were designated nonattainment, but were able to meet the requirements of the EAC Protocol currently have a deferral of their nonattainment designation until September 30, 2005.

IV. What Is an EAC?

An "EAC" is an "Early Action Compact." This is an agreement between a State, local governments and

EPA to implement measures not necessarily required by the Act in order to achieve cleaner air as soon as possible. Communities close to or exceeding the 8-hour ozone standard that have elected to enter into an EAC have started reducing air pollution at least two years sooner than required by the Act. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the Act. The 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 1-hour ozone standard will be revoked as of June 15, 2005 in most areas. It will not be revoked for previous 1-hour nonattainment areas that are 8-hour EAC areas, such as the Nashville, TN and Greensboro-Winston Salem-High Point, NC 1-hour area (the Triad 8-hour EAC area).[3] These areas will continue to implement transportation conformity requirements related to the 1-hour ozone standard. The 1-hour ozone transportation conformity requirements will no longer be in effect one year after the 8-hour ozone attainment designation if the areas are successful in achieving attainment through implementation of the EAC. If any EAC area is unsuccessful in attaining the 8-hour ozone NAAQS through the EAC process, it will be subject to the 8-hour ozone transportation conformity requirements one year after the nonattainment designation becomes effective.

The initial choice to enter into an EAC was voluntary on behalf of the local officials and State air quality officials. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating State and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using local pollution control measures in addition to federally mandated measures. While the choice of entering into an EAC was voluntary, all measures adopted as part of the EAC are being proposed for incorporation into the SIP and will be mandatory and federally enforceable.

In Region 4, EPA initially received 22 requests to enter into EACs in December 2002, including 100 counties in four states. Currently, there are 17 areas and 85 counties included in the EAC program in four Region 4 states. Of those 17, only eight areas received a deferral of their nonattainment designation. Five of the eight areas that have a deferred nonattainment designation are now attaining the 8-hour ozone standard and modeling attainment of that standard into the future. Consistent with EPA's EAC Protocol, 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 Act's deadline for all other areas not meeting the standard. The EAC protocol further requires communities to develop and implement air pollution control strategies, account for emissions growth and demonstrate attainment by 2007 and maintain the 8-hour ozone standard until at least 2012. Greater details of the EAC program are explained in EPA's December 16, 2003 (68 FR 70108) proposed **Federal Register** document entitled "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas."

North Carolina submitted an EAC for the Unifour area on December 19, 2002, the Fayetteville area on December 20, 2002, and the Triad and Mountain areas on December 23, 2002. These were signed by representatives of the local communities, State air quality officials and the Regional Administrator. The EPA deferred the effective date of nonattainment designations for EAC areas that were violating the 8-hour ozone standard, but continue to meet the compact milestones. Details of this deferral were published in the April 30, 2004, (69 FR 23858), **Federal Register** notice. The North Carolina EAC area designations are discussed further in Section V of today's rulemaking. To date, the North Carolina EAC areas have met all EAC milestones and, as long as EAC areas continue to meet the agreed upon milestones, the nonattainment designation will be deferred until April 15, 2008. At that time EAC areas with air quality monitoring data showing attainment for the years 2005–2007 that have also met all the compact milestones will be designated as attainment for the 8-hour ozone standard.

V. What Are the North Carolina EAC Areas and Their Respective 8-Hour Ozone Designations?

In April 2004 (69 FR 23858), EPA designated areas as nonattainment for the 8-hour NAAQS based upon air quality monitoring data during the 2001 through 2003 ozone seasons. EPA designated counties in the Mountain EAC area as unclassifiable/attainment, counties in the Unifour EAC area and Cumberland County in the Fayetteville EAC area as nonattainment-deferred, three counties in the Triad EAC area unclassifiable/attainment and the remaining eight counties in the Triad EAC area nonattainment-deferred for the 8-hour ozone standard (*See* Table 1). Although the counties in the Mountain EAC area were designated unclassifiable/attainment for the 8-hour ozone standard, three counties opted to continue with the EAC process.

TABLE 1.—NORTH CAROLINA EAC AREAS AND THEIR 8-HOUR OZONE DESIGNATIONS

EAC areas	EAC 8-hour ozone designation
Mountain Area of Western North Carolina EAC Area (Mountain EAC Area):[4]	
Buncombe County	Unclassifiable/Attainment.
Haywood County (partial)	Unclassifiable/Attainment.
Madison County	Unclassifiable/Attainment.
Unifour EAC Area:	
Alexander County	Nonattainment-deferred.
Burke County (partial)	Nonattainment-deferred.
Caldwell County (partial)	Nonattainment-deferred.
Catawba County	Nonattainment-deferred.
Triad EAC Area:	
Alamance County	Nonattainment-deferred.
Caswell County	Nonattainment-deferred.
Davidson County	Nonattainment-deferred.

[3] Notably, the counties included in the 8-hour EAC area may not directly correspond with all the counties included in the previous 1-hour area for the similar geographic area.

TABLE 1.—NORTH CAROLINA EAC AREAS AND THEIR 8-HOUR OZONE DESIGNATIONS—Continued

EAC areas	EAC 8-hour ozone designation
Davie County	Nonattainment-deferred.
Forsyth County	Nonattainment-deferred.
Guilford County	Nonattainment-deferred.
Randolph County	Nonattainment-deferred.
Rockingham County	Nonattainment-deferred.
Stokes County	Unclassifiable/Attainment.
Surry County	Unclassifiable/Attainment.
Yadkin County	Unclassifiable/Attainment.
Fayetteville EAC Area:	
Cumberland County	Nonattainment-deferred.

To date, the North Carolina EAC areas have met all EAC milestones and, as long as EAC areas continue to meet the agreed upon milestones, the impact of the designations will be deferred until April 15, 2008. At that time, EPA will evaluate the 8-hour ozone designations for these areas.

VI. How Is Attainment Demonstrated for the 8-Hour Ozone Standard With a Photochemical Model?

An area will typically evaluate necessary control measures using modeling programs to determine how that area can meet and maintain the NAAQS. This process is no different for EAC areas which used modeling and screening tests to evaluate attainment and maintenance of the 8-hour ozone standard. The attainment test uses ambient air quality monitored design values with model-generated ozone concentration data. The test is applied at each monitor in the area as well as applicable unmonitored modeling sites in the EAC area. A future year design value is developed by multiplying the ratio of the future year to current year model-predicted 8-hour daily maximum ozone concentrations by a current design value. The current ambient air quality design value is developed from air quality monitored data. Under EPA regulations at 40 CFR Part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient ozone concentrations is less than or equal to 0.08 ppm. (*See* 69 FR 23857, April 30, 2004, for further information). If modeled predicted future site-specific design values are less than 0.085 ppm at each monitor site, the test is passed.[5]

A. How Was Attainment Demonstrated Through the North Carolina EAC Modeling?

The North Carolina modeling was developed consistent with the EPA draft modeling guidance and EAC protocol guidance that was available when the modeling was conducted.[6] The air quality modeled concentrations were developed using the Multiscale Air Quality Simulation Platform (MAQSIP) multi-scale photochemical air quality model. Representative episodes from several years were used in the base year modeling to validate the model for use in developing a control strategy for attainment of the 8-hour ozone NAAQS. The episodes were chosen to be reflective of the most frequent meteorological conditions that are conducive to 8-hour ozone exceedances. Three types of modeling inventories are needed for the attainment demonstration modeling: The base, current and future year inventories. The base year inventory represents the year of the episode being modeled and is used for evaluating the performance of the photochemical air quality model. The base years and episodes used in this SIP demonstration are July 13–15, 1995, June 21–24, 1996, June 27–29, 1996 and July 11–15, 1997. The second inventory is the "current" year inventory. For the North Carolina EAC modeling demonstration, the current year is 2000 (this is the most recent year that North Carolina DENR could develop in time for the SIP demonstration). Ideally, the current year, which represents a recent inventory, would be 2002. The use of older emission inventories introduces more uncertainties as projections are made over longer time periods. Areas with 8-hour ozone SIPs due in 2007 are expected to use the 2002 inventory as mentioned in the policy memo ("2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM2.5, and Regional Haze Programs" by Lydia N. Wegman dated November 18, 2002). However, for EAC SIPs submitted in 2004, EPA will accept another year provided the data represents recent conditions. The 2000 emission inventory was the most recent inventory that was available for North Carolina to use in their EAC SIP demonstration. The 2000 current year inventory is processed using all of the different meteorological episodes being studied. The photochemical modeling uses the current year inventory and those results are used as a representation of current air quality conditions. Several future year inventories were developed for the attainment year (2007) and maintenance years (2012 and 2017). It is the future year base inventories to which control strategies and sensitivities are applied to determine the controls necessary to attain the ozone standard. The attainment test is passed for all EAC area monitors for the future years of 2007, 2012 and 2017 for the North Carolina EAC areas using the higher of the most recent monitored design values from 1999–2001 and 2001–2003. The future-predicted design values from the North Carolina modeling are presented in Table 2. With the exception of the Cooleemee monitor (which does indicate attainment) in the Triad area, the future design values are well below 84 ppb for the North Carolina EAC monitors.

[4] Henderson and Transylvania Counties opted out of the Mountain EAC area and are no longer participating.

[5] Although the ozone standard is 0.08 ppm, monitored values less than 0.085 are rounded down to 0.08 whereas monitored values equal to or greater than 0.085 are rounded up, and considered to be an exceedance of the standard. The 8-hour ozone standard can also be expressed in parts per billion and EPA often refers to monitors meeting the standard if they monitor values less than 85 ppb.

[6] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 8-hour ozone NAAQS. See U.S. EPA, (1999), Draft Guideline on the Use of Models and Other Analysis in Attainment Demonstrations for the 8-Hour Ozone NAAQS, EPA–454/R–99–00413, (May 1999). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "DRAFT8HR")

EPA, June, 2002. "Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standard". Located at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

"Appendix W to 40 CFR Part 51: Guideline on Air Quality Models." Located at *http://www.epa.gov/scram001/* (file name: "Appendix W").

TABLE 2.—NORTH CAROLINA FUTURE DESIGN VALUES (PPB)

Area/monitor	2007	2012	2017
Fayetteville EAC Area:			
Wade	78	73	69
Golfview	77	72	68
Mountain EAC Area:			
Fry Pan	77	73	73
Purchase Knob	75	70	67
Bent Creek	74	69	68
Waynesville	71	67	65
Triad EAC Area:			
Cooleemee	84	79	75
Hattie Avenue	80	75	71
Union Cross	79	73	70
Bethany	76	71	70
Cherry Grove	76	72	69
McLeansville	76	71	68
Shiloh Church	76	72	68
Sophia	72	67	64
Plooirosa	69	65	63
Unifour EAC Area:			
Taylorsville	75	69	67
Lenoir/Caldwell County	73	68	66

B. Were Supplemental Analyses Used in the Technical Demonstration for Attainment in North Carolina?

According to the 1999 draft EPA 8-hour ozone modeling guidance (the guidance available when North Carolina began their modeling), a weight of evidence (WOE) determination is optional if attainment is modeled. If it is submitted, it provides additional corroborative analyses to support and strengthen the attainment modeling. A WOE determination uses different analyses than the photochemical model and is therefore useful in providing corroboration of the results of a photochemical model. These analyses are particularly useful if the attainment test results are within a few parts per million of the 8-hour ozone standard. The State of North Carolina chose to submit a WOE determination to support the attainment modeling results. The WOE determination results varied for each EAC area but are supportive of the modeling conclusions for attainment. The WOE determination is described in detail and for each EAC area in the Technical Support Document (TSD)[7] for this document. The WOE determination elements in the SIP submittal are summarized below.

Three analysis items as defined in the draft EPA 8-hour ozone modeling guidance and two state-derived analyses were developed using the air quality modeling. A percent reduction is developed for the relative change between the current and future year for the five analysis items. The five air quality modeling analyses are:

1. Number (#) of grid cells with hourly 8-hour ozone concentration > 84 ppb
2. Number of maximum daily 8-hour ozone concentration > 84 ppb
3. Sum of grid-cells with predicted hourly 8-hour ozone concentration > 84 ppb
4. Sum of grid-cells with predicted maximum daily 8-hour ozone concentration > 84 ppb
5. Number of grid cells with predicted maximum 8-hour ozone concentrations sorted within EPA's Air Quality Index codes (*e.g.*, green, yellow, orange and red categories)

An 80 percent change in the number of grid cells for a metric represents a sizeable improvement in 8-hour ozone concentrations. The WOE modeling-based results illustrate reductions in expected future year ozone. However, the majority of local EAC control measures were not included in the modeling. The expected emission reductions from the measures which were not modeled further support the conclusion that the EAC areas will attain and maintain the 8-hour ozone standard. EAC control measures are discussed in Section VII of this notice.

TABLE 3.—AVERAGE PERCENT (%) REDUCTIONS FROM WEIGHT OF EVIDENCE DETERMINATION RESULTS

Analysis item	Percent reduction for each EAC area			
	Triad	Fayetteville	Mountain	Unifour
# grid cells with hourly 8-hour ozone concentration > 84 ppb.	>95% (2007) ..... 100% (2012 & 2017) ...	100% (2007, 2012, 2017)..	>95% (2007) ..... 100% (2012 & 2017) ...	>85% (2007) >95% (2012 & 2017)
# maximum daily 8 hour ozone concentration > 84 ppb.	>95% (2007) ..... 100% (2012 & 2017) ...	100% (2007, 2012, 2017).	>95% (2007) ..... 100% (2012 & 2017) ...	>85% (2007) >95% (2012 & 2017)
sum of grid-cells with predicted hourly 8-hour ozone concentration > 84 ppb.	>95% (2007) ..... 100% (2012 & 2017) ...	100% (2007, 2012, 2017).	>95% (2007) ..... 100% (2012 & 2017) ...	>85% (2007) >95% (2012 & 2017)
sum of grid-cells with predicted maximum daily 8-hour ozone concentration > 84 ppb.	>95% (2007) ..... 100% (2012 & 2017) ...	100% (2007, 2012, 2017).	>95% (2007) ..... 100% (2012 & 2017) ...	>85% (2007) >95% (2012 & 2017)

[7] The TSD can be found in RME ID No. R04–OAR–2004–NC–0005 (see the **ADDRESSES** section of this notice for further information on RME).

TABLE 3.—AVERAGE PERCENT (%) REDUCTIONS FROM WEIGHT OF EVIDENCE DETERMINATION RESULTS—Continued

Analysis item	Percent reduction for each EAC area			
	Triad	Fayetteville	Mountain	Unifour
number of grid cells for EPA's Air Quality Index orange and red codes combined.	>95% (2007) ..... 100% (2012 & 2017) ...	100% (2007, 2012, 2017).	100% (2007, 2012, 2017).	~100% (2007, 2012, 2017)

The reductions presented in Table 3 well surpassed the EPA draft 8-hour ozone modeling guidance recommendation of achieving grid cell improvements.

C. What Is the Maintenance for Growth Plan for the EAC Areas?

In addition to control measures designed to attain and maintain the 8-hour ozone standard, North Carolina's EAC SIP also includes a comprehensive maintenance plan. In summary, North Carolina proposes to implement a maintenance plan similar to the requirements for section 175A of the Clean Air Act, which requires maintenance plans to be submitted for all areas redesignated from nonattainment to attainment. EPA's EAC Protocol required demonstration of maintenance of the 8-hour ozone standard through 2012; North Carolina's maintenance plan models attainment through 2017. The North Carolina maintenance plan also includes the following:

1. An attainment demonstration for the 2007–2017 period. Future design values developed through modeling for 2007, 2012 and 2017 that are below 85 ppb at all monitors in the EAC areas.

2. A commitment for a mid point evaluation in 2012.

3. A commitment to develop the maintenance plan for a second 10-year period for 2017–2027 and a schedule for developing that plan including emission inventories and air quality modeling. The schedule is as follows:

- December 2004—North Carolina submits EAC SIP, covering both attainment date of 2007 and first 10-year maintenance period through 2017
- April 2005—State of North Carolina and EAC areas implement EAC measures
- December 2005—First annual tracking report is submitted to EPA
- December 2006—Second annual tracking report is submitted to EPA
- December 2007—Attainment date
- December 2007—Third annual tracking report is submitted to EPA
- April 2008—EPA designates area attainment for the 8-hour ozone standard providing areas have 3 years of quality assured data showing attainment
- December 2008—The State completes evaluation of new emissions data and determines whether revised modeling analysis is required
- December 2008—Fourth annual tracking report is submitted to EPA and continues for each year thereafter through the end of the maintenance period
- January 2013—The State begins work on 10-year maintenance plan update
- December 2015—Submits 10-year maintenance plan update to EPA
- December 2027—20-year maintenance plan and annual tracking for growth concludes.

4. A commitment to update the EAC plan and submit to EPA in 2015.

5. A commitment to annually track stationary and highway mobile source emissions. Provides triggers (emissions growth thresholds and rates) and actions (air quality analyses, modeling and adopting additional controls) to be performed to address emission growth.

6. Based on the tracking of the growth of stationary and onroad mobile source emissions, North Carolina will commit to adopt and implement additional control measures, if needed, throughout the maintenance period.

7. A commitment to perform air quality analyses reviews and report each December.

8. Commitments for tracking and taking follow-up action are in force unless the 8-hour ozone standard is revoked in the future. North Carolina believes that would happen only in the event that EPA revises or revokes the current 8-hour ozone standard of 0.08 parts per million. To date, EPA has not proposed any revisions to the ozone NAAQS.

9. A commitment to evaluate, in 2008, whether or not a full modeling update is needed for all EAC areas.

10. Provide the following timeline of actions and submittals for the maintenance plan from December 2004 to December 2027.

D. What Are EPA's Conclusions on the North Carolina EAC Technical Demonstration for Attainment and Maintenance?

Attainment and maintenance of the 8-hour ozone NAAQS is demonstrated in the North Carolina EAC SIP submittal. EPA believes that the appropriate data and procedures are used to assess 8-hour ozone attainment for the NC EAC areas. EPA's analysis indicates that the combination of local scale modeling, WOE analyses and control strategies demonstrates attainment of the 8-hour ozone NAAQS for each North Carolina EAC area. Additional details of the North Carolina EAC modeling are presented in the TSD for the State submittal.

VII. What Measures Are Included in This EAC SIP Submittal?

The North Carolina submittal describes that several control measures are already in place or being implemented over the next few years that will contribute to attainment and maintenance of the 8-hour ozone standard. These measures include controls on both stationary and mobile emissions sources. The Federal and State control measures were modeled for the future years.

The Federal control measures that were modeled by North Carolina included the Tier 2 vehicle standards and low sulfur gasoline, which affects all passenger vehicles in a manufacturer's fleet; the heavy-duty gasoline and diesel highway vehicle standards, which are designed to reduce NO_X and VOC emissions from heavy duty gasoline and diesel highway vehicles; large nonroad diesel engine standards, for equipment such as those used in construction, agricultural, and industrial equipment; and nonroad spark ignition engines and recreational engines standard, which will regulate NO_X, HC and CO for groups of previously unregulated nonroad engines.

The State control measures that were modeled included the Clean Air Bill, in which the vehicle emissions inspection and maintenance program was expanded from 9 counties to 48, phased in between July 1, 2002 through January 1, 2006. Another State measure was the NO_X SIP Call Rule, which will reduce summertime NO_X emissions from power plants and other industries by 68 percent by 2006. These reductions began to be implemented in 2002. The

Clean Smokestacks Act will reduce NO_X emissions beyond the requirements of the NO_X SIP Call Rule and will require coal-fired power plants to reduce annual NO_X emissions by 78 percent by 2009 and be applied year round. This is one of the first state laws of its kind in the nation. An open burning ban is another state control measure that was modeled.

The only local control measure that was modeled was the fuel switching at one of the RJ Reynolds facilities in the Triad EAC area. The modeling results clearly show reductions in expected future year ozone levels. The majority of local EAC control measures were not included in the modeling. These expected emission reductions further support the conclusion that the North Carolina EAC areas will attain and maintain the 8-hour ozone standard in the future. Examples of these expected emission reductions not modeled are summarized in Table 4. For a complete list of local reductions see Appendix Q of the December 17, 2004, 8-hour ozone attainment demonstration for the North Carolina EAC areas submitted to EPA on December 21, 2004 found in the RME system as mentioned in the **ADDRESSES** section of today's rulemaking.

TABLE 4.—ADDITIONAL EAC LOCAL REDUCTIONS NOT MODELED

Strategy	Estimated reduction	
	NO_X (tons/year)	VOC (tons/year)
Triad EAC:		
Increase ridership on municipal and regional bus service	3.5	5.0
Create new Park and Ride Lots	3.2	1.8
Expand PART ride sharing & vanpooling	0.7	0.7
Expand car pooling	19.0	23.2
Diesel retrofits on school buses	23.0	17.0
Truck Stop Electrification	35.0	1.8
Duke Energy Anti-Idling Policy	0.7	—
Increase use of Biodiesel	2% increase in Biodiesel use	30% increase in Biodiesel use.
Fayetteville EAC:		
Landfill harvesting methane and selling energy	5.0	
Retrofitting Diesel School buses		~42% reduction.
Unifour EAC:		
Expanded Public Transportation	0.4	0.5
Compressed Work Weeks	1.3	1.5
Regional Bicycle & Pedestrian Plan	1.6	2.0
City and County Energy Plan	0.4	0.5

The modeled control measures detailed in Section VII meet the requirements of the EAC protocol: they are specific, quantified, permanent and will be federally enforceable when approved by EPA. In compliance with the next EAC program milestone, each of the control measures listed above, including any measures substituted by local areas, are scheduled to be implemented on or before December 31, 2005. The TSD contains additional information on each of these control measures, as well as information on numerous local measures that are expected to have benefits, but for which specific emission reductions were not quantified.

Despite the growth estimated for the EAC areas, the more stringent federal emission standards are projected to substantially reduce emissions of NO_X and VOCs in the newer fleet of vehicles. Improved emission controls in major industrial, commercial and institutional facilities (point sources) are also projected to significantly reduce emissions of NO_X. 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 EAC areas will be in attainment of the 8-hour ozone standard in 2007 and will remain in attainment through 2012 and 2017. The EPA has reviewed the modeling and emission projections and believes attainment is demonstrated. Therefore, EPA is proposing to approve the demonstration of attainment.

VIII. What Happens if the Area Does Not Meet the EAC Commitments or Milestones?

In the April 30, 2004, (69 FR 23858) Final Rulemaking, EPA designated counties in the Mountain EAC area as unclassifiable/attainment, and counties in the Unifour, Fayetteville and Triad EAC areas as nonattainment-deferred for the 8-hour ozone standard. The Triad EAC area includes counties that are designated unclassifiable/attainment and counties that are designated nonattainment-deferred in the 69 FR 23858. In accordance with the April 30, 2004, (69 FR 23858) Final Rulemaking the effective date of nonattainment for the EAC areas (see Table 4) has been deferred until September 30, 2005. The measures outlined in the North Carolina SIP submittal provide every indication that the North Carolina EAC areas will attain the 8-hour ozone standard by December 31, 2007 and complete each milestone and action agreed upon in the compact. However, if one milestone is missed, EPA will take action to propose and promulgate a finding of failure to meet the milestone, and to withdraw the deferred effective date of the nonattainment designation.

IX. Why Are We Proposing To Approve This EAC SIP Submittal?

We are proposing to approve this EAC SIP submittal because the SIP submittal demonstrates attainment by December 31, 2007 and maintenance of that standard through 2027. We have reviewed the submittal and determined that it is consistent with the requirements of the Act, EPA's policy, and the EAC protocol. The TSD contains detailed information concerning this rulemaking action.

Approving the EAC submittals into the SIP will also mean that measures and controls identified therein become federally enforceable and the North Carolina EAC areas' citizens will start to benefit from reductions in air pollution sooner than if the areas were designated nonattainment. See Section VII of this rulemaking action for the description of air pollution control measures. Finally, it means that EPA has determined that the EAC areas have continued to fulfill the milestones and obligations of the

EAC Program. In a separate action, EPA will take action proposing to defer the effective date of nonattainment designation for these areas until December 31, 2006, so long as the areas continue to fulfill the EAC obligations, including semi-annual reporting requirements, implementation of the measures in the EAC submittal by December 31, 2005, and a progress assessment by June 30, 2006.

X. Proposed Action

EPA is proposing to approve the attainment demonstration and the Mountain area, Unifour area, Triad area and Fayetteville area EACs and incorporate these into the North Carolina SIP. The modeling of ozone and ozone precursor emissions from sources in the four North Carolina EAC areas demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007. These specified control strategies are consistent with the EAC program.

XI. 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, 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).

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, 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 (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 40 CFR Part 52

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

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

Dated: May 18, 2005.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–10473 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–SC–0001, R04–OAR–2005–GA–0001–200516; FRL–7917–9]

Approval and Promulgation of Air Quality Implementation Plans; South Carolina and Georgia; Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plans (SIPs) submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) and Georgia Environmental Protection Division (EPD) on December 31, 2004. These revisions are submitted pursuant to the Early Action Compact (EAC) Protocol [1] and will result in emission reductions needed to attain and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) in the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah EAC areas. Only the Lower Savannah EAC area has counties in both South Carolina and Georgia; for the purposes of this document, however, the above described EAC areas will be collectively referred to as the "South Carolina—Georgia EAC Areas." EPA is proposing approval of the photochemical modeling used by South Carolina and Georgia to support the attainment demonstration of the 8-hour ozone standard within these areas. The proposed revisions further incorporate the local control measures in the South Carolina—Georgia EAC Areas, a new regulation, 61–62.5 Standard No. 5.2, Control of Oxides of Nitrogen (NO_X) and revisions to Regulation 61–62.2, Prohibition of Open Burning.

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–

[1] The EAC Protocol can be found at *http://www.epa.gov/air/eac/* and in Regional Materials in Edocket (RME) ID No. R04–OAR–2005–SC–0001 or R04–OAR–2005–GA–0001 (*see* the **ADDRESSES** section of this notice for further information on RME).

SC–0001 for any comments regarding the South Carolina submittal or ID No. R04–OAR–2005–GA–0001 for any comments regarding the Georgia submittal, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/* 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.

3. *E-mail: ward.nacosta@epa.gov.*

4. *Fax:* 404–562–9019.

5. *Mail:* "R04–OAR–2005–SC–0001" or "R04–OAR–2005–GA–0001", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier:* Deliver your comments to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–SC–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site 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 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 electronic docket are listed in the 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 hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@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 revisions to the South Carolina and Georgia SIPs under sections 110 and 116 of the Clean Air Act ("CAA" or "the Act"). These revisions demonstrate attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm),[2] within the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah EAC areas (collectively referred to as the South Carolina-Georgia EAC Areas) by 2007, and incorporate the control measures developed by these EACs into the South Carolina and Georgia SIPs. The South Carolina-Georgia EACs are agreements between the states, local governments, and EPA. The intent of these agreements is to reduce ozone pollution and thereby attain and maintain the 8-hour ozone standard by 2007, sooner than required by CAA for areas designated nonattainment. Section VII of this proposal describes the control measures that will be implemented within the South Carolina-Georgia EAC Areas.

II. What Is a SIP?

The "SIP" is the State Implementation Plan required by section 110 of the CAA and its implementing regulations. In essence, 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 National Ambient Air Quality Standards (NAAQS). Once included in the SIP, these regulations, strategies, and analyses are federally enforceable by EPA. The NAAQS 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. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations. Discussed in greater

[2] The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

detail below, SIP revisions relating to attainment of the 8-hour ozone standard by South Carolina and Georgia submitted to EPA on December 31, 2004, and the contents of the EACs are now being proposed.

III. What Is Ozone and the Purpose of the 8-hour Ozone Standard?

Ozone is formed by a series of chemical reactions involving nitrogen oxides (NO_X), the result of combustion processes, and reactive organic gases, also termed volatile organic compounds (VOCs). NO_X and VOCs are emitted into the air through many sources such as vehicles, power plants and other industrial facilities. Ozone and its precursors have many adverse effects on human health and can cause the following: irritation of the respiratory system, reduction of lung function (making it more difficult to breathe), aggravation of asthma, inflammation and damage to the lining of the lungs, and an increase in the risk of hospital admissions and doctor visits for respiratory problems. In order to reduce ozone it is necessary to reduce NO_X and VOCs, ozone precursors. Consistent with the Act, ozone reductions are achieved by establishing NAAQS, such as the 8-hour ozone standard, and implementing the measures necessary to reduce ozone and its precursors. In the April 30, 2004, (69 FR 23858), **Federal Register** document entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates," EPA designated every county in the United States unclassifiable/attainment or nonattainment. Generally, when areas are designated nonattainment, they must put measures in place that will control and maintain ozone concentrations at healthy levels; areas designated as attainment must also develop maintenance plans to ensure ozone concentrations do not increase over time to unhealthy levels. The EAC program involves a commitment by areas close to attainment of the ozone standard to achieve clean air sooner. The areas' commitment is demonstrated by implementing control measures to achieve attainment earlier than mandated by the 8-hour ozone NAAQS and the Clean Air Act. The EAC areas designated nonattainment, but were able to meet the requirements of the EAC Protocol currently have a deferral of their nonattainment designation until September 30, 2005.

IV. What Is an EAC?

An "EAC" is an "Early Action Compact." This is an agreement between a State, local governments, and EPA to implement measures not necessarily required by the CAA in order to achieve cleaner air as soon as possible. Communities close to or exceeding the 8-hour ozone standard that have elected to enter into an EAC have started reducing air pollution at least two years sooner than required by the Act. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the Act. 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 1-hour ozone standard will be revoked as of June 15, 2005 in most areas. It will not be revoked for previous 1-hour nonattainment areas that are 8-hour EAC areas, such as the Nashville, Tennessee and Greensboro-Winston Salem-High Point, North Carolina 1-hour area (the Triad 8-hour EAC area).[3] These areas will continue to implement transportation conformity requirements related to the 1-hour ozone standard. The 1-hour ozone transportation conformity requirements will no longer be in effect one year after the 8-hour ozone attainment designation if the areas are successful in achieving attainment through implementation of the EAC. If any EAC area is unsuccessful in attaining the 8-hour ozone NAAQS through the EAC process, it will be subject to the 8-hour ozone transportation conformity requirements one year after the nonattainment designation becomes effective.

The initial choice to enter into an EAC was voluntary on behalf of the local officials and State air quality officials. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating State and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using local pollution control measures in addition to federally mandated measures. While the choice of entering into an EAC was voluntary, all measures adopted as part of the EAC are now being proposed for incorporation into the SIP and will be mandatory and federally enforceable.

In Region 4, EPA initially received 22 requests to enter into EACs in December 2002, including 100 counties in four states. Currently, there are 17 areas and 85 counties included in the EAC program in four states. Of those 17, only eight areas received a deferral of their nonattainment designation. Five of the eight areas that have a deferred nonattainment designation are now attaining the 8-hour ozone standard and modeling attainment into the future. Consistent with EPA's EAC Protocol, 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 CAA deadline for all other areas not meeting the standard. The EAC Protocol further requires communities to develop and implement air pollution control strategies, account for emissions growth and demonstrate attainment by 2007 and maintenance for at least five years of the 8-hour ozone standard. Greater details of the EAC program are explained in EPA's December 16, 2003, (68 FR 70108) proposed **Federal Register** document entitled "Deferral of Effective Date of Nonattainment Designations for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas."

On December 20, December 27, and December 31, 2002, South Carolina submitted signed EACs for the South Carolina-Georgia EAC Areas (see Section I). Georgia EPD submitted materials supporting the Lower Savannah EAC Area on December 31, 2002. The EACs were signed by representatives of the local communities, State air quality officials in both Georgia and South Carolina, and the Regional Administrator. The South Carolina and Georgia EAC area designations are discussed further in Section V of today's proposal. To date, the South Carolina-Georgia EAC Areas have met all EAC milestones and, as long as EAC areas continue to meet the agreed upon milestones, the nonattainment designations will be deferred until April 15, 2008. At that time, EAC areas with air quality monitoring data showing attainment for the years 2005–2007 that have met all compact milestones will be designated attainment.

V. What Are the South Carolina-Georgia EAC Areas and Their Respective 8-hour Ozone Designations?

In April 2004, EPA designated areas as nonattainment for the 8-hour ozone NAAQS based upon air quality monitoring data during the 2001–2003 ozone seasons. On April 30, 2004, (69 FR 23858) the EPA published a Final Rule in the **Federal Register** designating the following EAC 8-hour ozone nonattainment-deferred and

[3] Notably, the counties included in the 8-hour EAC area may not directly correspond with all the counties included in the previous 1-hour area for the similar geographic area.

unclassifiable/attainment areas in South Carolina and Georgia:

SOUTH CAROLINA-GEORGIA EAC 8-HOUR OZONE DESIGNATIONS

EAC areas	EAC 8-hour ozone designation
Appalachian Area:	
Anderson County	Nonattainment-deferred.
Cherokee County	Unclassifiable/Attainment.
Greenville County	Nonattainment-deferred.
Oconee County	Unclassifiable/Attainment.
Pickens County	Unclassifiable/Attainment.
Spartanburg County	Nonattainment-deferred.
Catawba Area:	
Chester County	Unclassifiable/Attainment.
Lancaster County	Unclassifiable/Attainment.
Union County	Unclassifiable/Attainment.
York County (partial) [a]	Unclassifiable/Attainment.
Pee Dee Area:	
Chesterfield County	Unclassifiable/Attainment.
Darlington County	Unclassifiable/Attainment.
Dillion County	Unclassifiable/Attainment.
Florence County	Unclassifiable/Attainment.
Marion County	Unclassifiable/Attainment.
Marlboro County	Unclassifiable/Attainment.
Waccamaw Area:	
Georgetown County	Unclassifiable/Attainment.
Horry County	Unclassifiable/Attainment.
Williamsburg County	Unclassifiable/Attainment.
Santee Lynches Area:	
Clarendon County	Unclassifiable/Attainment.
Kershaw County	Unclassifiable/Attainment.
Lee County	Unclassifiable/Attainment.
Sumter County	Unclassifiable/Attainment.
Berkeley-Charleston-Dorchester (B–C–D) Area:	
Berkeley County	Unclassifiable/Attainment.
Charleston County	Unclassifiable/Attainment.
Dorchester County	Unclassifiable/Attainment.
Low Country Area:	
Beaufort County	Unclassifiable/Attainment.
Colleton County	Unclassifiable/Attainment.
Hampton County	Unclassifiable/Attainment.
Jasper County	Unclassifiable/Attainment.
Lower Savannah Area (GA–SC):	
Aiken County, SC	Unclassifiable/Attainment.
Allendale County, SC	Unclassifiable/Attainment.
Bamburg County, SC	Unclassifiable/Attainment.
Barnwell County, SC	Unclassifiable/Attainment.
Calhoun County, SC	Unclassifiable/Attainment.
Orangeburg County, SC	Unclassifiable/Attainment.
Columbia County, GA	Unclassifiable/Attainment.
Richmond County, GA	Unclassifiable/Attainment.
Central Midlands Area:	
Fairfield County	Unclassifiable/Attainment.
Lexington County	Nonattainment-deferred.
Newberry County	Unclassifiable/Attainment.
Richland County	Nonattainment-deferred.
Upper Savannah Area:	
Abbeville County	Unclassifiable/Attainment.
Edgefield County	Unclassifiable/Attainment.
Greenwood County	Unclassifiable/Attainment.
Laurens County	Unclassifiable/Attainment.
Saluda County	Unclassifiable/Attainment.

[a] the portion of York not designated nonattainment for 8-hour ozone in the Charlotte nonattainment area.

Currently, eight out of the ten South Carolina-Georgia EAC Areas do not have deferred nonattainment designations and are participating in the EAC process to demonstrate their support of cleaner air statewide. There are only two areas, Appalachian and Central Midlands, in South Carolina, with nonattainment-deferred designations that are participating in the EAC program. Those counties in the Appalachian, Anderson, Greenville, and Spartanburg, South Carolina areas are now attaining the 8-hour ozone standard based on 2002–2004 air quality monitoring data. Those counties in the Central Midlands, Lexington and Richland, South Carolina areas are very close to the standard and are modeling attainment by 2007. To date, the South Carolina-Georgia EAC Areas have met all EAC milestones and,

as long as EAC areas continue to meet the agreed upon milestones, the impact of the nonattainment designations will be deferred until April 15, 2008. At that time, EPA will evaluate the 8-hour ozone designations for these areas.

VI. How Is Attainment Demonstrated for the 8-hour Standard With a Photochemical Model?

In developing its SIP, an area will typically evaluate necessary control measures using modeling programs to determine how that area can meet and maintain the NAAQS. This process is no different for EAC areas which used modeling and screening tests to evaluate attainment and maintenance of the 8-hour ozone standard. The attainment tests use ambient air quality monitored design values with model-generated ozone concentration data. The test is applied at each monitor in the area as well as applicable unmonitored modeling sites in the EAC area. A future year design value is developed by multiplying the ratio of the future year to current year model-predicted 8-hour daily maximum ozone concentrations by a current design value. The current design value is developed from air quality monitored data. Under EPA regulations at 40 CFR Part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient ozone concentrations is less than or equal to 0.08 ppm. (*See* 69 FR 23857, April 30, 2004, for further information). If modeled predicted future site-specific design values are less than 0.085 ppm at each monitor site, the test is passed.[4]

A. How Was Attainment Demonstrated Through the South Carolina EAC Modeling?

The South Carolina modeling was developed consistent with the EPA draft modeling guidance and EAC Protocol guidance that was available when the modeling was conducted. [5] Note, the names of the areas used in the modeling for attainment differ from the names of the EAC areas. The South Carolina—Georgia EAC Areas and their modeled area counterparts are presented in Table 1.

TABLE 1.—NAMING CONVENTION FOR EAC AREAS AND MODELED AREAS

EAC area	Modeled areas with monitors
Appalachian	Anderson/Greenville/Spartanburg.
Catawba	Rock Hill.
PeeDee	Darlington/Florence.
Waccamaw	Coastal Sites.
Santee Lynches	Area without monitors.
Berkeley, Charleston, Dorchester	Coastal Sites without monitors.
Low Country	Coastal Sites.
Lower Savannah	Aiken/Augusta.
Central Midlands	Columbia.
Upper Savannah	Anderson/Greenville/Spartanburg.

Although EPA guidance recommends use of a 1999 inventory for EAC areas, South Carolina's use of a 1998 inventory was allowed for a number of reasons. Most notably, the 1998 emissions inventory is considered more representative and conservative than the1999 emissions inventory. Other reasons are discussed in the South Carolina Technical Support Document (TSD). In evaluating South Carolina's request to use 1998 data, the State presented a comparison between the 1999 National Emissions Inventory and the 1998 State inventory. Although a discrepancy existed in the estimation of the area source emissions, the State was able to explain how the conclusions for attainment would not be compromised with the use of the 1998 emissions. Therefore, the State's analysis indicates that use of the 1998 inventory is acceptable for demonstrating attainment in EAC areas. (The TSDs to this document contain a more detailed discussion of this issue and other areas of the technical demonstration for attainment and maintenance.)

Using 1998 as its "current year," the South Carolina modeling predicted that the State would attain the 8-hour ozone standard at all EAC area monitors for the future years of 2007, 2012 and 2017. The higher of the 1997–1999 and 2001–2003 design values were used in the application of the modeled and screening tests for the EAC modeling. The future-predicted design values using the South Carolina modeling are presented in Table 2. South Carolina—Georgia EAC Areas were modeling attainment without incorporating the local EAC measures into the modeling. Therefore, these additional measures, that will be required by the South Carolina and Georgia SIPs, will provide additional air quality benefits beyond what was presented in this modeling.

[4] Although the 8-hour ozone standard is 0.08 ppm, monitored values less than 0.085 are rounded down to 0.08 whereas monitored values equal to or greater than 0.085 are rounded up, and considered to be an exceedance of the standard. The 8-hour ozone standard can also be expressed in parts per billion and EPA often refers to monitors meeting the standard if they monitor values less than 85 ppb.

[5] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 8-hour ozone NAAQS. See U.S. EPA, (1999), Draft Guideline on the Use of Models and Other Analysis in Attainment Demonstrations for the 8-Hour Ozone NAAQS, EPA–454/R–99–00413, (May 1999). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "DRAFT8HR").

EPA, June, 2002. "Protocol for Early Action Compacts Designed to Achieve and Maintain the 8–Hour Ozone Standard". Located at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

"Appendix W to 40 CFR Part 51: Guideline on Air Quality Models." Located at *http://www.epa.gov/scram001/* (file name: "Appendix W").

TABLE 2.—SOUTH CAROLINA—GEORGIA EAC FUTURE DESIGN VALUES (PPB)

Area/county	Monitor	2007 DVF (ppb)	2012 DVF (ppb)	2017 DVF (ppb)
Aiken/Augusta EAC Area				
Aiken	Jackson	72	72	70
Barnwell	Barnwell	71	71	69
Edgefield	Trenton	72	69	67
Richmond, GA	Augusta	77	75	74
Anderson/Greenville/Spartanburg EAC Area				
Abbeville	Due West	78	69	66
Anderson	Powdersville	84	80	78
Cherokee	Cowpens	80	78	76
Oconee	Long Creek	74	72	71
Pickens	Clemson	80	77	75
Spartanburg	North Spartanburg Fire Station	81	80	79
Union	Delta	73	67	64
Columbia EAC Area				
Richland	Parklane	79	77	76
Richland	Sandhill	80	77	75
Richland	Congaree Bluff	61	59	58
Darlington/Florence EAC Area				
Darlington	Pee Dee	77	74	73
Rock Hill EAC Area				
Chester	Chester	82	77	75
York	York	78	74	73
Coastal Sites EAC Area				
Berkeley	Bushy Park	69	67	66
Charleston	Army Reserve	66	64	63
Charleston	Cape Romain	71	68	69
Colleton	Ashton	68	66	64
Williamsburg	Indiantown	61	61	60

B. How Was Supplemental Modeling Developed by Georgia Used in the Demonstration for Attainment in South Carolina?

The Lower Savannah (Aiken/Augusta) EAC area is a multi-state area that includes counties in both Georgia and South Carolina. This area was designated attainment for the 8-hour ozone standard on June 15, 2004. Both states independently developed 8-hour ozone attainment demonstrations for the Aiken/Augusta EAC area. The Georgia modeling was developed consistent with existing EPA modeling and EAC Protocol guidance and is discussed in greater detail in the Georgia TSD. In Georgia, the air quality modeled concentrations were developed using the Community Multiscale Air Quality (CMAQ), a regional- and urban-scale, nested-grid photochemical air quality model. A current year of 2000 was modeled for the attainment test. Georgia's modeling demonstrated attainment of the 8-hour ozone standard for the future years of 2007 and 2012 for the Lower Savannah (Aiken/Augusta) EAC area using current design values from 1999--2001. This modeling by Georgia strengthens the results of South Carolina's modeling because the future year results are consistent in concluding attainment and maintenance of the 8-hour ozone standard. A comparison of the future-predicted design values as independently developed in the South Carolina and Georgia modeling are presented in Table 3.

TABLE 3.—AIKEN/AUGUSTA FUTURE DESIGN VALUES (PPB) FROM SOUTH CAROLINA AND GEORGIA

Augusta EAC area county	2007 DVF (ppb)	2012 DVF (ppb)
Richmond, GA		
SC results	77	75
GA results	77	73
Aiken, SC		
SC results	72	72
GA results	75	72
Edgefield, SC		
SC results	72	69
GA results	70	66
Barnwell, SC		
SC results	71	71
GA results	71	70

C. What Is the Maintenance for Growth Plan for the EAC Areas?

In addition to control measures designed to attain and maintain the 8-hour ozone standard, South Carolina's EAC SIP submittal also includes a comprehensive maintenance plan. Specific details on the maintenance plan are contained in the South Carolina EAC SIP. In summary, South Carolina proposes to implement a maintenance plan similar to the requirements for section 175A of the Clean Air Act, which requires maintenance plans to be submitted for all areas redesignated from nonattainment to attainment. EPA's EAC Protocol required demonstration of maintenance of the 8-hour ozone standard through 2012; South Carolina's maintenance plan models attainment through 2017. The South Carolina EAC maintenance plan includes the following:

- An attainment demonstration for the 2007–2017 period. Future design values developed through modeling for 2007, 2012 and 2017 that are below 85 ppb at all monitors in the EAC areas; Table 2 presents these attainment test results.
- A commitment for a mid-point evaluation in 2012.
- A commitment to develop the maintenance plan for a second 10-year period for 2017–2027 and a schedule for developing that plan including emission inventories and air quality modeling:
- December 2004—SC DHEC submits EAC SIP, covering both attainment date of 2007 and first 10-year maintenance period through 2017.
- April 2005—SC DHEC and EAC areas implement EAC measures.
- December 2005—First annual tracking report is submitted to EPA.
- December 2006—Second annual tracking report is submitted to EPA.
- December 2007—Attainment date.
- December 2007—Third annual tracking report is submitted to EPA.
- April 2008—EPA designates area attainment for the 8-hour standard providing areas have 3 years of quality assured data showing attainment.
- December 2008—Fourth annual tracking report is submitted to EPA and continues for each year thereafter through the end of the maintenance period.
- January 2013—SC DHEC begins work on 10-year maintenance plan update.
- December 2015—Submits 10-year maintenance plan update.
- December 2027—20-year maintenance plan and annual tracking for growth concludes.
- Commitment to update the EAC plan and submit to EPA in 2015.
- Commitment to annually track stationary and highway mobile source emissions Provides triggers (emissions growth thresholds and rates) and actions (air quality analyses, modeling and adopting additional controls) to be performed to address emission growth.
- Based on the tracking of the growth of stationary source emissions, the maintenance plan commits to adopt and implement additional control measures, if needed, throughout the maintenance period.
- Commitment to perform air quality analyses reviews and report each December.
- Commitments for tracking and taking follow-up actions are in force unless the 8-hour ozone standard is revoked in the future. South Carolina believes that would happen only in the event that EPA revises or revokes the current 8-hour ozone standard of 0.08 parts per million. To date, EPA has not proposed any revisions to the ozone NAAQS.
- Commitment to evaluate, in 2008, whether or not a full modeling update is needed for all EAC areas.
- Provides the following timeline of actions and submittals for the maintenance plan from December 2004 to December 2027.

In addition to South Carolina's maintenance plan, the Georgia modeling indicates that maintenance of the 8-hour ozone standard will likely continue beyond the 2007 attainment date for the Aiken/Augusta EAC area. For further information, refer to Appendix 17—Augusta Early Action Compact Ozone State Implementation Plan Revision of the South Carolina EAC submittal. The Georgia and South Carolina TSDs are available in the electronic public docket, RME ID No. R04–OAR–2005–GA–0001 and R04–OAR–2005–SC–0001 (*see* the **ADDRESSES** section of this notice for further information on RME).

D. What Are EPA's Conclusions on the EAC Technical Demonstration for Attainment and Maintenance?

EPA evaluation of the South Carolina and Georgia EAC modeling indicates that the South Carolina-Georgia EAC Areas will attain and maintain the 8-hour ozone standard at least until 2017. Even though the South Carolina and Georgia modeling demonstrations were independently developed using different assumptions, inventories, episodes, and models, the results were similar—consistent levels of future attainment are indicated and the future design values are below 85 ppb and within 3 ppb of each other for the Aiken/Augusta area. EPA's analysis indicates that the appropriate data and procedures were used to assess 8-hour ozone attainment for the Aiken/Augusta EAC areas, and all other South Carolina-Georgia EAC Areas. EPA's analysis moreover indicates that the combinations of local scale modeling and control strategies demonstrate attainment of the 8-hour ozone NAAQS for each South Carolina EAC area. Additional details of the South Carolina and Georgia EAC modeling are presented in the TSDs for the two state submittals.

VII. What Measures Are Included in This EAC SIP Submittal?

The South Carolina and Georgia EACs incorporate both local and statewide control measures to attain and maintain the 8-hour ozone standard. Many of the measures outlined for inclusion in the SIP are not necessary for attainment or maintenance of the 8-hour ozone standard, but are additional measures that will improve air quality and South Carolina and Georgia have committed to implementing these additional measures through the EAC program.

Some of the measures used to model attainment are federal measures (national and regional measures) such as Phase I of the NO_X SIP Call, which regulates nitrogen oxides emitted from large facilities, and Tier 2 vehicle standards, which affect all passenger vehicles in a manufacturer's fleet. South Carolina's modeling also included statewide measures. As part of its commitment to cleaner air quality sooner, South Carolina promulgated amendments to Regulation 61–62, Air Pollution Control Regulations and Standards by adding regulation 61–62.5 Standard No. 5.2, Control of Oxides of Nitrogen (NO_X) and revising Regulation 61–62.2—Prohibition of Open Burning. Regulation 61–62.5 Standard No. 5.2, Control of Oxides of Nitrogen (NO_X) applies to new and existing stationary sources that emit NO_X from fuel combustion and have not undergone a best available control technology (BACT) analysis for NO_X. The regulation is designed primarily to assist with the issue of growth and is also geared toward smaller sources that fall below the applicability thresholds for prevention of significant deterioration (PSD). These are sources that, for the most part, would not otherwise be required to install NO_X controls. For new sources, the regulation requires the installation of control technology that is based on BACT standards found in the national RACT/BACT/LAER clearinghouse. For existing sources, the regulation only applies when an applicable unit replaces its burner. At this point, the facility would be required

to replace the burner with a low NO_X burner or equivalent technology capable of achieving at least a 30 percent reduction from uncontrolled levels.

The second statewide measure is additional restrictions on open burning. Regulation 61–62.2, Prohibition of Open Burning has been revised and deletes the exception for the burning of household trash and allows for certain residential construction waste to be burned only outside of the ozone season of April 1 through October 30. Therefore only certain types of "clean" wastes can be burned year round. A detailed description of the estimated NO_X reductions can be found in Appendix 13—Estimated Emissions Reductions Achieved by R.61–62.2, Prohibition of Open Burning, and by R.61–62.5, Control of Oxides of Nitrogen and in Appendix 16—County Level Emission Reductions and Descriptions for the Ozone Early Action Compact Areas, as part of the county level emission reductions for the EAC areas. These regulations will be applicable statewide and have also been submitted to EPA for incorporation into the SIP. Once approved, these regulations will be federally enforceable.

In addition to the measures adopted statewide, the South Carolina SIP submittal also includes many local measures to be incorporated into the SIP. This occurs primarily in the nonattainment-deferred county descriptions which contains detailed local measures with estimated reductions. For all county level emissions reductions, see Appendix 16—County Level Emission Reductions and Descriptions for the Ozone Early Action Compact Areas. These measures are outlined in the table below:

COUNTY LEVEL EMISSION REDUCTIONS IN SOUTH CAROLINA EAC NONATTAINMENT-DEFERRED AREAS

Commitment	Implementation strategies	Emissions reduction actual or potential		
		NO_X	VOC	CO
SC 61–62.5, Std. 5.2, "Control of Oxides Nitrogen"—New State Regulation.	SIP (federal and State).	2,913 tons[b]	Not avail.	Not avail.
SC 61–62.2, "Prohibition of Open Burning—Modified State Regulation (PM reductions as well).	SIP (federal and state)	147 tons[c]	698 tons	Not avail.
Smart Highways—Modified version of Transportation Conformity (deferred areas).	N/A (federal upon final SIP approval).	0	0	0
Voluntary permit limit by SCE & G—Wateree (Richland County).	Through the MOA until modification of the Title V permit, then enforceable through the permit (federal and state).	40% red.	0	0
Voluntary permit reduction of 1,000 tons by International Paper (Richland).	Through the MOA until modification of the Title V permit, then enforceable through the permit (federal and state).	0	0	0
Voluntary control equipment installation at Duke Power—Installation of advanced low NO_X burners on Units 1 and 2. Changes will result in emission limits reducing from 0.40lb/MMBtu to 0.24lb/MMBtu(Anderson).	Federal and state (Permit).	850 tons	Not avail.	Not avail.
Voluntary early installation of control equipment at Transco Pipeline—Operating Permit 2060–0179. Transco has 14 natural gas fired internal combustion (IC) engines that collectively accounted for 3,822 tons of ozone season NO_X emissions in 1997. Transco has submitted a construction permit application to put on NO_X controls that will result in 1,261 tons of ozone season NO_X emissions. The permit was approved on April 27, 2004.	Federal and state (Permit).	2,561 tons	Not avail.	Not avail.
Truck Stop Electrification Project (Anderson) 51 spaces were outfitted with Idle Aire Technology.	Federal and state (MOA).	36.2 tons	1.84 tons	15.3 tons.
School Bus Retrofit Project (Anderson) Approximately 23 diesel buses will be retrofitted with particulate filters during 2006..	Federal and state (MOA).	0	391 lbs	2,737 lbs.
School Bus Retrofit Project (Greenville) Approximately 47 diesel buses will be retrofitted with particulate filters during 2006..	Federal and state (MOA).	0	799 lbs	5,593 lbs.
School Bus Retrofit Project (Spartanburg) Approximately 20 diesel buses will be retrofitted with particulate filters during 2006..	Federal and state (MOA).	0	340 lbs	2,380 lbs.
School Bus Retrofit Project (Lexington) Approximately 28 diesel buses will be retrofitted with particulate filters during 2006..	Federal and state (MOA).	0	476 lbs	3,332 lbs.

COUNTY LEVEL EMISSION REDUCTIONS IN SOUTH CAROLINA EAC NONATTAINMENT-DEFERRED AREAS—Continued

Commitment	Implementation strategies	Emissions reduction actual or potential		
		NO_X	VOC	CO
School Bus Retrofit Project (Richland) Approximately 21 diesel buses will be retrofitted with particulate filters during 2006..	Federal and state (MOA).	0	357lbs	2,499 lbs.
Gas Can Exchange Events—115 cans were exchanged (Greenville).	N/A (federal upon final SIP approval).	0	711lbs	0.
Gas Can Exchange Events—250 cans were distributed (Lexington and Richland).	N/A (federal upon final SIP approval).	0	823 lbs	0.
Improvements to Park and Ride lot at Highway 378 and I–20 (Lexington).	County	476 lbs	924 lbs	7,297 lbs.
Conversion of Commercial Vehicle Fleet to Propane—(Lexington).	N/A (federal upon final SIP approval).	1,638 lbs	1,300 lbs	8,244 lbs.
Biodiesel Buses, University of South Carolina. (Richland).	N/A (federal upon final SIP approval).	25 lbs	12 lbs	34 lbs.
University of South Carolina Ethanol Project (Richland).	N/A (federal upon final SIP approval).	18 lbs	19 lbs	1,250 lbs.
Take a Break from the Exhaust program (Lexington, Newberry, Kershaw, and Richland).	State	393 lbs	568 lbs	5,494 lbs.
SC DHEC has a number of flex fuel vehicles that run almost exclusively on E85. (Richland).	N/A (federal upon final SIP approval).	103 lbs	104 lbs	6,030 lbs.
Ethanol (E85) refueling station for public (Richland).	N/A (federal upon final SIP approval).	621 lbs	162 lbs	2,369 lbs.
Smart Ride—Mass Transit Program (Lexington, Newberry, Kershaw, and Richland).	N/A (federal upon final SIP approval).	207 lbs	153 lbs	3,166 lbs.
Totals from SC's Ozone Early Action Program.	6,522 Tons	703 Tons	36 Tons.	

[b] Potential reductions.

[c] The anticipated reductions noted here are from the ban imposed on the burning of residential construction waste only. Further reductions are expected to result from other revisions to the Open Burning regulation that are more difficult to quantify. For instance, the burning of household trash generates 2,379 tons of NO_X and 11,896 tons of VOCs annually. The revision to the regulation that occurred through this process closed a loophole that had allowed household trash to be burned under certain circumstances. While it is not clear the exact amount of reductions that will result from this revision, it is certain that additional reductions in both NO_X and VOCs will occur.

In addition to measures being implemented throughout the state of South Carolina, similar measures in the state of Georgia are likely to positively impact air quality in the Lower Savannah (Aiken/Augusta) EAC area. There are two counties in Georgia, Richmond and Columbia, participating in the Early Action Compact Program as a part of the Upper Savannah area. Georgia has statewide control measures that will be implemented and they are an open burning ban during the ozone season and Stage I Vapor Recovery. In addition to the open burning bans and Stage I Vapor Recovery measures, Richmond County and the City of Augusta may be pursuing a number of local measures, such as distributing information at public meetings about air quality and the impact of air pollution on human health, implementing projects in the regional bicycle and pedestrian plan, and smog alerts. A more detailed list of control measures under consideration was submitted with the December 2003 milestone report. Attachment B of the Georgia (Augusta) EAC SIP submittal contains a copy of a resolution of support for the Augusta EAC that the Augusta/Richmond Council adopted on April 20, 2004. The Georgia EPD has not incorporated any quantitative emission reductions from any current or planned local measures into the demonstration contained in this SIP.

VIII. What Happens if the Area Does Not Meet the EAC Commitments or Milestones?

In the April 30, 2004, (69 FR 23858) Final Rulemaking, EPA designated the counties of Anderson, Greenville, and Spartanburg, and partial counties of Lexington and Richland as nonattainment-deferred for the 8-hour ozone standard. In accordance with the April 30, 2004, (69 FR 23858) Final Rulemaking, the effective date of nonattainment for these counties in the EAC areas of Appalachian and Central Midlands, respectively, (*see* Section V) has been deferred until September 30, 2005. The measures outlined in the South Carolina and Georgia EAC SIP submittals provide every indication that the South Carolina-Georgia EAC Areas will attain the 8-hour ozone standard by December 31, 2007 and complete each milestone and action agreed upon in the compact. However, if one milestone is missed, EPA will take action to propose and promulgate a finding of failure to meet the milestone, and to withdraw the deferred effective date of the nonattainment designation.

IX. Why Are We Proposing To Approve This EAC SIP Submittal?

We are proposing to approve this EAC SIP submittal because the SIP submittals demonstrate attainment of the 8-hour ozone standard by December 31, 2007, and maintenance of that standard through 2017 in South Carolina and 2012 for Georgia. We have reviewed the submittals and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC Protocol. The TSDs for each state contain additional and more detailed information concerning this proposed action.

Approving the EAC submittals into the SIP will also mean that measures and controls identified therein become federally enforceable and the ten South Carolina-Georgia EAC Areas' citizens will start to benefit from reductions in

air pollution earlier than the statutory deadlines. *See* Section VII of this proposal for the description of air pollution control measures. Finally, it means that EPA has determined that the EAC areas have continued to fulfill the milestones and obligations of the EAC Program. In a separate action, EPA will take action proposing to defer the effective date of nonattainment designation for these areas until December 31, 2006, so long as the areas continue to fulfill the EAC obligations, including semi-annual reporting requirements, implementation of the measures in the EAC submittal by December 31, 2005, and a progress assessment by June 30, 2006.

X. Proposed Action

EPA is proposing to approve the attainment demonstration and the South Carolina-Georgia EACs of Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah areas and incorporate these into the South Carolina and Georgia SIPs. The modeling of ozone concentrations and ozone precursor emissions from sources in the 47 counties within the South Carolina-Georgia EAC Areas demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007. These specified control strategies are consistent with the EAC program.

XI. 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, 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).

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, 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 (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 40 CFR Part 52

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

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

Dated: May 18, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–10475 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–ME–0005; A–1–FRL–7913–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; VOC Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve two State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions establish requirements to reduce volatile organic compound (VOC) emissions from mobile equipment repair and refinishing, and solvent cleaning operations. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0005 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *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.

3. *E-mail: conroy.dave@epa.gov.*

4. *Fax:* (617) 918–0661.

5. *Mail:* "RME ID Number R01–OAR–2004–ME–0005," David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. *Hand Delivery or Courier:* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S.

Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617)918–1047, *arnold.anne@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 9, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–10480 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0002; A–1–FRL–7914–9]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Smaller-Scale Electric Generating Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), particulate matter (PM), and carbon monoxide (CO) from smaller-scale electric generating units. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0002 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. 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.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: "RME ID Number R01–OAR–2005–ME–0002," David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier: Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Christine Sansevero, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1699, *sansevero.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this rule, the Agency contemplates no further activity. If EPA receives adverse comments, the Agency will withdraw the direct final rule and will address all public comments we receive in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 9, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–10509 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0008; FRL–7917–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eleven Individual Sources; Partial Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of proposed rule.

SUMMARY: Due to incomplete information contained in the Commonwealth's submission, EPA is withdrawing an individual source that was included as part of a proposed rule to approve Pennsylvania's SIP pertaining to source-specific volatile organic compounds (VOC) and nitrogen oxides (NO_X) RACT determinations for eleven individual sources located in Pennsylvania. The proposed rule was published on March 31, 2005 (70 FR 16469). Subsequently, EPA is withdrawing the one provision of that proposed rule.

DATES: The proposed addition of the entry for Dart Container Corporation in 40 CFR 52.2020(d)(1) published at 70 FR 16469 is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186, or by e-mail at *devose.pauline@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the proposed rule located in the Proposed Rules section of the March 31, 2005, **Federal Register** (70 FR 16469). EPA is withdrawing only the provision for one individual source, namely, Dart Container Corporation, Upper Leacock Township, Lancaster County, Pennsylvania. The other actions in the March 31, 2005, **Federal Register** are not affected.

List of Subjects in 40 CFR Part 52

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

Dated: May 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–10510 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2005–0085; FRL–7918–5]

Petition to Remove 4,4′-Methylene Diphenyl Diisocyanate From the List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of a complete petition to delist 4,4′-methylene diphenyl diisocyanate from the list of hazardous air pollutants.

SUMMARY: The EPA is announcing the receipt of a complete petition from the Diisocyanates Panel of the American Chemistry Council (ACC) requesting EPA to remove the chemical 4,4′-methylene diphenyl diisocyanate (MDI)(Chemical Abstract Service No. 101–68–8) from the list of hazardous air pollutants (HAP) contained in section 112(b)(1) of the Clean Air Act (CAA). We have determined that the ACC's original petition dated December 23, 2002, and the addenda provided by the ACC through March 7, 2005, will support an assessment of the human health impacts associated with people living in the vicinity of facilities emitting MDI. In addition, the data submitted by the ACC will support an assessment of the environmental impacts associated with emissions of MDI to the ambient air and deposited onto soil or water. Consequently, we have concluded that ACC's petition is complete as of March 7, 2005, the date that the last addendum was received, and is ready for public comment and the technical review phase of our delisting procedure.

The EPA invites the public to comment on the petition and to provide additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts associated with MDI that may be relevant to our technical review. The petition is available through Docket ID OAR–2005–0085.

DATES: Written comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by Docket ID OAR–2005–0085, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Mail:* Air and Radiation Docket and Information Center (Mail Code 6102T), Room B108, 1200 Pennsylvania Ave., NW., Washington, DC 20460].
- *Hand Delivery:* Air and Radiation Docket and Information Center (Mail Code 6102T), Room B102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0085. 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. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

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 information, 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 form at the Air and Radiation Docket, Docket ID No. 2005–0085, 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 and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Jenkins, Office of Air Quality Planning and Standards, Emission Standards Division (Mailcode C404–01), EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–1167; fax number: (919) 541–0840; e-mail address: *jenkins.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Petitions To Delist a Hazardous Air Pollutant

A. What Is the List of Hazardous Air Pollutants?

The list of HAP includes a wide variety of organic and inorganic substances released from large and small industrial operations, fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The HAP have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with the various HAP may differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed, and the stage in life of the person when the exposure occurs. The list of HAP, which includes MDI, can be found in section 112(b)(1) of the CAA. The HAP list provides the basis for research, regulation, and other related EPA activities under the CAA.

B. What Is a Delisting Petition?

A delisting petition is a formal request to EPA from an individual or group to remove a specific HAP from the HAP list. The removal of a HAP from the list eliminates it from consideration in EPA's program to promulgate national, technology-based emissions control standards. This technology-based standards program is commonly referred to as the maximum achievable control technology (MACT) program.

Petitions to add or delete chemicals from the HAP list are allowed under section 112(b)(3)(A) of the CAA. The CAA specifies that any person may petition the Administrator to modify, by addition or deletion, the list of HAP. The EPA Administrator is required under section 112(b)(3)(A) of the CAA to either grant or deny a petition to delist a specific HAP within 18 months of the receipt of a complete petition.

To delete a substance from the HAP list, CAA section 112(b)(3)(C) requires that the petitioner must provide adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bio-accumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects.

C. How Does EPA Review a Petition To Delist a HAP?

The petition review process proceeds in two phases: A completeness determination and a technical review. During the completeness determination, we conduct a broad review of the petition to determine whether all of the necessary subject areas are addressed. In addition, we determine if adequate data, analyses, and evaluation are included for each subject area. Once the petition is determined to be complete, we place a notice of receipt of a complete petition in the **Federal Register.** That notice announces a public comment period on the petition and starts the technical review phase of our decision-making process. The technical review determines whether the petition has satisfied the necessary requirements and can support a decision to delist the HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. How Is the Decision To Delist a HAP Made?

The decision to either grant or deny a petition is made after a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of section 112(b)(3)(C) of the CAA. If the Administrator decides to grant a petition, a proposal will be published in the **Federal Register** announcing that decision and the opportunity for public comment. That notice would propose a modification of the HAP list and present the reasoning for doing so. However, if the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial will be published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability and is subject to judicial review as provided in section 307(b) of the CAA.

III. Completeness Determination and Request for Public Comment

On December 23, 2002, we received a petition from the ACC's Diisocyanates Panel to remove MDI from the HAP list. Because of incomplete documentation of emissions information and modeling procedures, EPA determined that the

petition was incomplete and requested that the petitioner provide additional information. The petitioner submitted an addendum on September 2, 2004, addressing EPA's concerns regarding the completeness of the petition. We identified a need for additional information supporting the MDI emissions estimates and the modeling performed. The petitioner submitted a second addendum dated February 28, 2005, to address these issues. We received one of the appendices to this addendum, in the form of a CD–ROM, on March 7, 2005.

After reviewing the original petition and the addenda, we have determined that all of the necessary subject areas for a human health and environmental risk assessment have been addressed. Therefore, the petition is complete and ready for technical review. The ACC's last submission, received March 7, 2005, marked the start of the 18-month technical review and decision period. Today's notice initiates our comprehensive technical review of the petition and invites public comment on the substance of the petition as described above.

IV. Description of Petition

The original petition and addenda provided by the ACC contain the following information:

- Background data on MDI including chemical properties, physical properties, production data, and use data;
- Identification and location of facilities that emit MDI;
- Estimated emission rates of MDI for each facility;
- Toxicological data describing the human health and environmental effects of MDI;
- Atmospheric dispersion modeling that provide estimates of MDI concentrations adjacent to facilities that emit it;
- Environmental effects data characterizing the fate of MDI emitted to the atmosphere; and
- Characterization of risks to human health and the environment due to emissions of MDI.

The petitioners revised the estimates of MDI emissions contained in the 1996 National Emissions Inventory (NEI) using a method described by William Robert and colleagues in the article titled, "Developing a National Emissions Inventory for MDI," (*Environmental Manager,* October, 2001). Many of these changes were incorporated into the 1999 NEI. The petitioners have continued to revise emissions estimates for MDI since the 1999 NEI. The petition presents their revised MDI emissions inventory which, according to the petitioners, represents an improvement over the 1999 NEI. These revisions resulted in a 400 percent increase in the number of facilities that emit MDI and a 75 percent decrease in national MDI emissions.

Based on the chemical and physical properties of MDI, the petitioner claims that inhalation is the only significant route of human exposure to MDI emissions. Using their revised MDI emissions inventory and some site-specific data as input for air dispersion modeling, the petition develops estimates of the maximum annual and 24-hour concentrations anticipated to occur at the boundaries of facilities that emit MDI. The petition compares modeling output to available health data and concludes that, given the low concentrations anticipated to occur at facility boundaries, MDI emissions cannot reasonably be anticipated to cause chronic or acute adverse health impacts in people living near MEI-emitting facilities.

The petition also claims that MDI is not expected to adversely impact the environment. Work supporting MDI's low environmental toxicity, lack of environmental persistence, and its low potential for bioaccumulation is presented.

We invite the public to comment on the technical merits of this petition and to submit any information that may impact EPA's ultimate decision to grant or deny the petitioner's request.

Dated: May 18, 2005.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–10579 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 101
Thursday, May 26, 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

Animal and Plant Health Inspection Service

[Docket No. 05–028–1]

Notice of Request for Extension of Approval of an Information Collection; National Animal Identification System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with a national animal identification system.

DATES: We will consider all comments that we receive on or before July 25, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–028–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–028–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the national animal identification system, contact Mr. Neil Hammerschmidt, Animal Identification Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–5571. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Identification System.

OMB Number: 0579–0259.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of animals and animal products and conducts various other activities to protect the health of our Nation's livestock and poultry.

Animal disease outbreaks around the globe over the past decade, and the detection of an imported cow infected with bovine spongiform encephalopathy in Washington State in December 2003, have intensified the public interest in developing a national animal identification program for the purpose of protecting animal health.

Fundamental to controlling any disease threat, foreign or domestic, to the Nation's animal resources is to have a system that can identify individual animals or groups, the premises where they are located, and the date of entry to each premises. Further, in order to achieve optimal success in controlling or eradicating an animal health threat, the timely retrieval of this information and implementation of intervention strategies after confirmation of a disease outbreak is necessary.

While there is currently no nationwide animal identification system in the United States for all animals of a given species, some segments of certain species are required to be identified as part of current program disease eradication activities. In addition, some significant regional voluntary identification programs are in place, and others are currently being developed and tested.

In 2004, USDA launched a limited pilot program that enabled States and tribes to initiate experimental animal and premises identification projects and to conduct trials and research to develop, test, and offer solutions for administering animal identification and collecting animal movement data. The pilot program has concluded.

A national animal identification system is being implemented by USDA at present on a voluntary basis. It is intended to identify all livestock, as well as record their movements over the course of their lifespans. USDA's goal is to create an effective, uniform, consistent, and efficient system that, when fully implemented, will allow traces to be completed within 48 hours of detection of a disease, ensuring rapid containment of the disease.

This system will also be crucial as USDA works to complete eradication programs in which States, industry, and the Federal Government have invested many years and millions of dollars. USDA is committed to developing a program that is tested both on the farm and in the livestock markets to ensure it is both practical and effective. USDA's technology-neutral position will allow industry to determine which animal identification method or methods are the most practical and effective for each species.

This national system will not require additional identification for animals already required to be identified as part of current disease eradication programs, but will replace or supplement various systems currently being used. It may, in fact, simplify the animal identification requirements in many cases, since a national system would provide for a single identification number for each animal rather than multiple numbers for different programs.

The national animal identification program involves a number of information collection and recordkeeping activities, including

nonproducer participant, individual animal, and animal group identifications; premises identifications; individual transaction records; group/lot movement records; a national animal identification implementation workplan submitted by participants applying for routine implementation funds; and a quarterly accomplishments report so that APHIS can track the progress of their various implementation projects and activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2039184 hours per response.

Respondents: State animal health authorities; federally recognized tribal governments; owners/operators of feedlots, markets, buying stations, and slaughter plants; producers; and nonproducer participants, such as accredited veterinarians, animal identification (ID) number managers (individuals or firms responsible for assigning animal ID numbers to producers), animal ID companies (companies that manufacture animal ID tags, microchips, or other animal ID devices), third party service providers (companies that provide herd management, dairy herd improvement, genetic evaluation, and other services to producers), and diagnostic laboratories and livestock buyers/dealers who submit data to the national database.

Estimated annual number of respondents: 250,000.

Estimated annual number of responses per respondent: 5.002.

Estimated annual number of responses: 1,250,000.

Estimated total annual burden on respondents: 255,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Done in Washington, DC, this 20th day of May 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–2671 Filed 5–25–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Management Planning—Transition to 2004 Planning Rule for Previously Initiated Plan Revision

AGENCY: Pike & San Isabel National Forests, Cimarron & Comanche National Grasslands, USDA.

Authority: 36 CFR 219.14(e).

Notice: Transition to 2004 Planning Rule for previously initiated Land Management Plan revision, Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands.

SUMMARY: The Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands will transition to the 2004 Planning Rule while revising the Land and Resource Management Plan.

DATES: Transition is effective upon publication of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Barb Masinton, 719–553–1475.

SUPPLEMENTARY INFORMATION: The Responsible Official (Forest Supervisor) for the Pike and San Isabel National Forests, Cimarron and Comanche, National Grasslands has elected to transition the previously-initiated Land and Resource Management Plan (Plan) Revision so that it falls under the requirements of the 2004 Planning Rule (January 5, 2005, 70 FR 1055). The Plan Revision will be conducted in accordance with all Forest Service directives applicable to the 2004 Planning Rule.

All four proclaimed units (Pike, San Isabel, Cimarron, and Comanche) fall under the current Plan. As part of the revision process, the Responsible Official will prepare two Plans. The first will involve the Cimarron and Comanche National Grasslands—the draft is scheduled for public comment in late 2005; the final will be completed in late 2006. The second of the two revised Plans will involve the Pike and San Isabel National Forests—the draft is scheduled for public comment in late 2008; the final will be completed in late 2009.

The public will be invited to collaborate during the development of each revised Plan. Key steps for collaboration occur during development and any subsequent updating of the comprehensive evaluation report, establishing the components of the plan, and in designing the monitoring program. The Responsible Official will decide upon and announce the methods and timing for public participation and involvement.

Dated: April 28, 2005.

Robert J. Leaverton,

Forest Supervisor.

[FR Doc. 05–10567 Filed 5–25–05; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Deep Seabed Mining Regulations for Exploration Licenses.

Form Number(s): None.

OMB Approval Number: 0648–0145.

Type of Request: Regular submission.

Burden Hours: 40.

Number of Respondents: 2.

Average Hours Per Response: 20 hours.

Needs and Uses: The Deep Seabed Hard Mineral Resources Act requires applicants for an exploration license to submit information for NOAA to make a determination as to the applicants' eligibility to meet the provisions of the legislation. The information will be used to determine the financial, environmental and technological eligibility of the applicant to meet the requirements of the Act to conduct exploration activities. Licensees are required to submit annual reports.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: May 20, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–10470 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Strengthening America's Communities Advisory Committee

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Change of agenda.

SUMMARY: The Strengthening America's Communities Advisory Committee (the "Committee") is announcing a change to the agenda for its open meeting in Clearwater, Florida.

DATES: Thursday, June 2, 2005, beginning at 8:30 a.m. (e.d.t.) (registration for public comments begins at 8 a.m. (e.d.t.)).

ADDRESSES: The meeting will take place at the Harborview Center, 300 Cleveland Street, Clearwater, Florida 33755. The meeting will be open to the public and seating will be available, but may be limited. Reservations are not accepted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Olson, Designated Federal Officer of the Committee, Economic Development Administration, Department of Commerce, Room 7015, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4495; facsimile (202) 482–2838; e-mail: *saci@eda.doc.gov*. Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce (the "Department") is subject to extensive security screening. For further information about the Committee or the President's Strengthening America's Communities Initiative, please visit the Department's Web site at *http://www.commerce.gov/SACI/index.htm*.

SUPPLEMENTARY INFORMATION: The Committee announces a change to the agenda for its open meeting in Clearwater, Florida. The Committee originally announced in the **Federal Register** on May 17, 2005 (70 FR 28270) that this meeting would take place on the afternoon of June 1, 2005 and during the morning of June 2, 2005. The meeting will now take place in its entirety on June 2, 2005.

The prospective agenda for the June 2, 2005 Committee meeting is as follows:

Call to Order;

Opening Remarks;

Review and Discussion of Key Committee Issues;

Public Comment Period; and

Special Presentations

The above agenda is subject to change. A more detailed agenda will be posted on the Department's Web site and a final agenda will be made available to the public the morning of the Committee meeting.

Public comments will be heard by the Committee in five-minute increments for approximately one hour. Those individuals who wish to make comments are asked to register on a first-come, first-served basis beginning at 8 a.m. (e.d.t.) at the entrance to the meeting room. Due to time limitations, there is a possibility that not all individuals wishing to make comments will be able to do so. Members of the public may also submit written statements to the Committee's Designated Federal Officer listed above at any time before or after the meeting. However, to facilitate distribution of written statements to Committee members prior to the meeting, the Committee suggests written statements be submitted to the Designated Federal Officer by facsimile or e-mail no later than May 30, 2005. Individuals interested in making oral or written comments to the Committee should visit the Department's Web site for additional rules and guidance.

Dated: May 23, 2005.

David Bearden,

Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. 05–10568 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(DOCKET 24–2005)

Foreign–Trade Zone 88, Great Falls, Montana, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board), by the Great Falls International Airport Authority, grantee of FTZ 88, requesting authority to expand its zone in Great Falls, Montana, within the Great Falls Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 19, 2005.

FTZ 88 was approved on November 2, 1983 (Board Order 225, 40 FR 51242, 11/10/1983), and currently consists of one site (156 acres) within the 2,045–acre Great Falls International Airport located at 2800 Terminal Drive in Great Falls.

The applicant is now requesting authority to expand the existing site to include an additional 1,823 acres within the Great Falls International Airport (total acreage - 1,979 acres). The airport site includes one existing building suitable for general warehouse/distribution activities, with additional space available for build–to-suit specifications. The site is owned by the Great Falls International Airport Authority and includes the jet fuel storage and distribution system. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is July 25, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to August 9, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the address Number 1 listed above, and at the Great Falls International Airport, Airport Administration, 2800 Terminal Drive, Great Falls, MT 59404.

Dated: May 19, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10566 Filed 5–25–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Jim Nunno, AD/CVD Operations, Office of China/Non–Market Economy Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone; (202) 482–0783.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review on fresh garlic from the People's Republic of China on December 7, 2004, which included a decision to extend the final results deadline until May 30, 2005. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004).

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days. We have determined that it is not practicable to complete this review by May 30, 2005. Several significant issues were raised in the briefs which warrant further analysis, including matters pertaining to the appropriate calculation methodology for normal value and which surrogate companies should be used to derive surrogate costs for factory overhead, selling, general and administrative expenses, and profit.

Section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations allow the Department to extend the deadline for the final results of a review to a maximum of 180 days from the date on which the notice of the preliminary results was published. For the reasons noted above, the Department is fully extending the time limit for the completion of these final results until no later than Monday, June 6, 2005, which is the next business day after 180 days from the date on which the notice of the preliminary results was published.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: May 20, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2683 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–828, A–588–846)

Continuation of Antidumping Duty Orders; Certain Hot–Rolled Flat–Rolled Carbon–Quality Steel Products From Brazil and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("the Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty orders on certain hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of the continuation of these antidumping duty orders.

EFFECTIVE DATE: May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on certain hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1]

As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2]

On May 5, 2005, the ITC determined pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Orders

See Appendices 1 and 2

Determination

As a result of the determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of

[1] *See Initiation of Five-year ("Sunset") Reviews*, 69 FR 24118 (May 3, 2004) and ITC's *Investigation Nos. 701-TA–384 and 731-TA–806–808* (Reviews), 69 FR 24189 (May 3, 2004).

[2] *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; Final Results of the Expedited Sunset Review of Antidumping Duty Order*), 69 FR 54630 (September 9, 2004).

[3] *See* Investigation No. 701-TA–384 and 731-TA–806–808 (Review), 70 FR 23886 (May 5, 2005).

the Act, the Department hereby orders the continuation of the antidumping duty orders on certain hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan.

As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue an order not later than seven days after the date of publication in the **Federal Register** of the ITC's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is May 12, 2005, seven days after the date of publication in the **Federal Register** of the ITC's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five–year review of these orders not later than April 2010.

These five–year (sunset) reviews and notice are in accordance with section 751(c) of the Act and 19 CFR 351.218(f)(4).

Dated: May 20, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX 1

Scope of the Order: Brazil (A–351–828)

The products covered under the antidumping duty order are certain hot–rolled flat–rolled carbon–quality steel products, meeting the physical parameters described below, regardless of application.

The hot–rolled flat–rolled carbon–quality steel products subject to this order are of a rectangular shape, of a width of 0.5 inch of greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics of other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Specifically included in this scope are vacuum degassed, fully stabilized (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. Steel products to be included in the scope of this order, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds certain specified quantities.

The merchandise subject to the order is currently classifiable under subheadings 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00 of the HTSUS. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including vacuum degassed and fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under tariff numbers 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

APPENDIX 2

Scope of the Order: Japan (A–588–846)

The products covered under the antidumping duty order are certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial–free ("IF") steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506) SAE/AISI grades of series 2300 and higher. Ball bearing steels, as defined in the HTSUS Tool steels, as defined in the HTSUS. Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

ASTM specifications A710 and A736. USS Abrasion–resistant steels (USS AR 400, USS AR 500). Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum;
Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum;
Tensil Strength = 70,000 88,000 psi.

Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.25% 0.70%	0.20 Max	0.21 % Max	% Max

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10– 0.14%	1.30–1.80%	0.025 % Max	0.005 % Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	..... 0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum
Tensile Strength = 105,000 psi Aim.

Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications.

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% ..... Max	1.40% Max	0.025 % Max	0.010 % Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005 %Max	Treated	0.01–0.07%

Width = 39.37 inches;
Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thickness ≤ 0.148 inches and 65,000 psi minimum for "thicknesses" > 0.148 inches; account for 64 FR 38650
Tensile Strength = 80,000 psi minimum.

Hot–rolled dual phase steel, phase–hardened, primarily with a ferritic–martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by silicon by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage > 26 percent account for 64 FR 38650, for thickness of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 640 N/mm² and an elongation percentage $ 25 percent for thickness of 2 mm and above.

Hot–rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maxiinum chromium.

Grade ASTM A570–50 hot–rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the HTSUS as subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00.

Certain hot–rolled flat–rolled carbon–quality steel covered by this order including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers:

7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the covered merchandise is dispositive.

[FR Doc. E5–2679 Filed 5–25–05; 8:45 am]
BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film from South Korea; Extension of Time Limit for Final Results of Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Martha Douthit at 202–482–5050, Hilary Sadler at 202–482–4340, Zev Primor at 202–482–4114, or Dana Mermelstein at 202–482–1391. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Extension of Time Limit for Final Results of Review

The Department of Commerce ("the Department") is extending the time limit for the final results of the sunset review of the antidumping duty order on polyethylene terephthalate (PET) film from South Korea (Korea). In accordance with section 751(c)(5)(B) of the Tariff Act of 1930, as amended ("the Act"), the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated. As set forth in 751(c)(5)(C)(v) of the Act, the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order. A transition order is defined as any antidumping or countervailing duty order which was in effect on January 1, 1995, the date on which the WTO Agreement entered into force with respect to the United States. *See* section 751(c)(6)(C) of the Act. The antidumping duty order subject to this sunset review was issued prior to January 1, 1995, and as such, is a transition order. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(v) of the Act, that the sunset review of the antidumping duty order on PET film from Korea is extraordinarily complicated and requires additional time for the Department to complete its analysis. The Department's final results of this sunset review were scheduled for June 2, 2005. The Department will extend the deadline in this proceeding and, as a result, intends to issue the final results of the sunset review of the antidumping duty order on PET film from Korea on August 31, 2005, which is 90 days from the original deadline.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(v) of the Act.

Dated: May 19, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2682 Filed 5–25–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–822]

Stainless Steel Bar From the United Kingdom: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department published in the **Federal Register** (70 FR 9918) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on stainless steel bar from the United Kingdom for the period March 1, 2004, through February 28, 2005. On March 31, 2005, Corus Engineering Steels (CES) requested an administrative review of its sales for this period. On April 22, 2005, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel bar from the United Kingdom with respect to this company. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 70 FR 20862.

Rescission of Review

On May 3, 2005, CES timely withdrew its request for an administrative review of its sales during the above-referenced period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review if the party that requests a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, CES has withdrawn its request for review within the 90-day period. CES was the sole party to request the initiation of the review; therefore, we are rescinding this review of the antidumping duty order on stainless steel bar from the United Kingdom.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 20, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2678 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702, A–580–813, A–583–816]

Stainless Steel Butt–Weld Pipe Fittings from Japan, Korea, and Taiwan; Extension of Time Limits for Final Results of Sunset Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: May 26, 2005.

INFORMATION CONTACT: Martha Douthit at 202–482–5050, Hilary Sadler at 202–482–4340, Zev Primor at 202–482–4114, or Dana Mermelstein at 202–482–1391. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Extension of Time Limit for Final Results of Reviews

The Department of Commerce ("the Department") is extending the time limits for the final results in the sunset reviews of the antidumping duty orders on stainless steel butt–weld pipe fittings from Japan, Korea, and Taiwan. In accordance with section 751(c)(5)(B) of the Tariff Act of 1930, as amended, ("the Act"), the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated. As set forth in 751(c)(5)(C)(v) of the Act, the Department may treat a sunset review as extraordinarily complicated, if it is a review of a transition order. A transition order is defined as any antidumping or

countervailing duty order which was in effect on January 1, 1995, the date on which the WTO Agreement entered into force with respect to the United States. *See* section 751(c)(6)(C) of the Act. All of the orders subject to these sunset reviews were issued prior to January 1, 1995, and as such, are transition orders. Specifically, the antidumping duty orders on stainless steel butt–weld pipe fittings from Japan, Korea, and Taiwan were issued on March 15, 1988, February 23, 1993, and June 16, 1993, respectively. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(v) of the Act, that the sunset reviews of the antidumping duty orders on stainless steel butt–weld pipe fittings from Japan, Korea, and Taiwan are extraordinarily complicated and require additional time for the Department to complete its analyses. The Department's final results of these sunset reviews were scheduled for June 2, 2005. The Department will extend the deadlines in these proceedings and, as a result, intends to issue the final results of the antidumping duty orders on stainless steel butt–weld pipe fittings from Japan, Korea, and Taiwan on August 31, 2005, which is 90 days from the original deadline.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(v) of the Act.

Dated: May 19, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2681 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–351–829)

Continuation of Countervailing Duty Order; Certain Hot–Rolled Flat–Rolled Carbon–Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("the Department") and the International Trade Commission ("ITC") that revocation of the countervailing duty order on certain hot–rolled flat–rolled carbon–quality steel products from Brazil, would likely lead to continuation or recurrence of countervailable subsidies, and material injury to an industry in the United States, the Department is publishing notice of the continuation of this countervailing duty order.

EFFECTIVE DATE: May 12, 2005.

CONTACT INFORMATION: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department initiated and the ITC instituted a sunset review of the countervailing duty order on certain hot–rolled flat–rolled carbon–quality steel products from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] As a result of its review, the Department found that revocation of the countervailing duty order would likely lead to continuation or recurrence of subsidies and notified the ITC of the net countervailing subsidy rate likely to prevail were the order to be revoked.[2]

On May 5, 2005, the ITC determined pursuant to section 751(c) of the Act, that revocation of the countervailing duty order on certain hot–rolled flat–rolled carbon–quality steel products from Brazil would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

See Appendix 1

Determination

As a result of the determinations by the Department and the ITC that revocation of this countervailing duty order would likely lead to continuation or recurrence of subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the countervailing duty order on certain hot–rolled flat–rolled carbon–quality steel products from Brazil.

As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue an order not later than seven days after the date of publication in the **Federal Register** of the ITC's determination concluding the sunset review and, immediately thereafter, will publish notice of its determination in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is May 12, 2005, seven days after the date of publication in the **Federal Register** of the ITC's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2010.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and 19 CR 351.218 (f)(4).

Dated: May 20, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX 1

Scope of the Order: Brazil (C–351–829)

The products covered under the countervailing duty order are certain hot–rolled flat–rolled carbon–quality steel products, meeting the physical parameters described below, regardless of application.

The hot–rolled flat–rolled carbon–quality steel products subject to this order are of a rectangular shape, of a width of 0.5 inch of greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics of other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Specifically included in this scope are vacuum degassed, fully stabilized (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. Steel products to be included in the scope of this order, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent of less, by weight; and (3) none of the elements listed below exceeds certain specified quantities.

The merchandise subject to the order is currently classifiable under subheadings 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00,

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[1] *See Initiation of Five-year ("Sunset") Reviews*, 69 FR 24118 (May 3, 2004) and ITC's *Investigation Nos. 701-TA–384 and 731-TA–806–808 (Review)*, 69 FR 24189 (May 3, 2004).

[2] *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 69 FR 70655 (December 7, 2004).

[3] *See Investigation Nos. 701-TA–384 and 731-TA–806–808 (Review)*, 70 FR 23886 (May 5, 2005).

7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00 of the HTSUS. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including vacuum degassed and fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under tariff numbers 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

[FR Doc. E5–2680 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Market Economy Inputs Practice in Antidumping Proceedings involving Non–Market Economy Countries.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for Comments.

SUMMARY: In antidumping proceedings involving non–market economy ("NME") countries, the Department of Commerce ("the Department") calculates normal value by valuing the NME producers' factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development which is also a significant producer of comparable merchandise. The goal of this surrogate factor valuation is to use the "best available information." *See* section 773(c)(1) of the Tariff Act of 1930; *Shangdong Huraong General Corp. v. United States*, 159 F. Supp.2d 714, 719 (CIT 2001). Normally, if a respondent sources an input from a market–economy supplier, the Department will use the average input price paid by the respondent to market economy suppliers (in market economy currency) to value all of the given input (both imported and domestically–sourced) used by respondents, provided three conditions are met. First, the volume of the imported input as a share of total purchases from all sources must be "meaningful," a term used in the Preamble to the Regulations but which is interpreted by the Department on a case–by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997) (Preamble). *See, also, Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001). Second, this average import price must reflect *bona fide* sales. Third, the Department disregards all inputs it has reason to believe or suspect might be dumped or subsidized. The Department is now considering options to change certain aspects of its current policy and practice regarding market economy input prices, and through this notice, invites public comment on the options detailed below. This notice is part of an ongoing effort by which the Department is considering modifications to its NME policy and practice. The Department may solicit additional public comment on other possible changes, as well.

DATES: Comments must be submitted by June 24, 2005.

ADDRESSES: Written comments (original and six copies) should be sent to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Economist, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202–482–1579 or 202–482–1843.

SUPPLEMENTARY INFORMATION:

Background

In an NME antidumping proceeding, the Department bases its calculation of normal value on the NME producers' factors of production, valued, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. *See* section 773(c)(1) of the Tariff Act of 1930. Where an NME producer purchases inputs from market economy suppliers and pays in a market–economy currency, however, the Department uses the actual price paid for these inputs, where possible. *See Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55271 (October 25, 1991). Where a portion of the factor input is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Department will normally value the factor using the price paid to the market–economy supplier. *See* 19 CFR 351.408(c)(1). The Department declines to value a given factor using prices paid to market economy suppliers when the quantity is not "meaningful", because, in such cases, the NME producer may not be able to purchase all of the inputs it needs for the input at that price. *See Preamble*, 62 FR at 27366. In keeping with its standard practice concerning factor valuation, the Department also declines to accept prices when it believes the transaction was not conducted at arm's length. Finally, the Department does not accept prices of goods sold when it has reason to believe or suspect that the goods may be dumped or subsidized.

The Department is considering changes to the policy and practice detailed above, in particular, to its interpretation of what constitutes a "meaningful" quantity of an input sourced from a market economy country. Under current practice, a "meaningful" quantity above which the Department will use market economy input prices to value all of an input is determined on a case–by-case basis. To address a concern that basing the entire input value on a small amount of purchases might not be the most accurate reflection of what a company pays to source the entire input, the Department is considering whether to apply certain criteria in determining whether the amounts purchased from a market economy supplier are "meaningful." There is further concern that our current practice may allow parties to manipulate the Department's margin calculations by sourcing just enough of an input from market economy suppliers so that the market economy price is used to value the entire input, even though that party does not source the entire input from foreign (market economy) suppliers in the normal course of business. In such situations, concern has been expressed that the market economy prices the Department would use to value an

entire input may not be reflective of actual prices.

These concerns, along with a general effort by the Department to examine its long–standing policies, have prompted the Department to review its practice concerning the use of prices paid by a respondent to market economy input suppliers. The appendix to this notice describes two broad approaches for revising the Department's practice in this area. The first approach would use market economy prices for inputs, but would limit their use to the valuation of the imported portion of the input only. Under the second approach, the Department would continue to use market economy import prices to value an entire input if it found the quantity of imports to be meaningful, but would apply certain criteria for determining what constitutes a "meaningful" amount. We invite comment on these and any other options regarding the Department's practice concerning market economy inputs in NME antidumping cases.

Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: http://ia.ita.doc.gov/.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: webmaster–support@ita.doc.gov.

Dated: May 19, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

(1) Is it appropriate for the Department to change its regulations and end its long–standing practice of using market economy import prices to value an entire input? For example, should the Department use market economy import prices to value only the portion of the input that was imported, and use surrogate country prices to value the remainder of the input?

(2) Assuming the Department continues its long–standing practice of using market economy import prices to value an entire input, what should the threshold be for the share or volume of a given input sourced from market economy suppliers to qualify as "meaningful" in order for the import price to be used to value all of the input?

(3) Please provide any additional views on any other matter pertaining to the Department's practice concerning the use of market economy import prices.

[FR Doc. E5–2677 Filed 5–25–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No: 050511129–5129–01]

Notice of Availability for License and Intent To Grant Co-Exclusive Patent Licenses

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Environmental Technology Laboratory, Oceanic and Atmospheric Research Laboratories, National Oceanic and Atmospheric Administration publish this notice to announce the intent to grant Vaisala, Inc. and Sonoma Technology Inc. co-exclusive licenses. Through this notice, NOAA solicits comments on this action to ensure that the granting of these licenses is consistent with statutory provisions related to the licensing of federally owned inventions.

DATES: All comments are due by August 26, 2005.

ADDRESSES: All comments and applications must be mailed to: John H. Raubitschek, Patent Counsel, Department of Commerce, Room 4835, HCHB, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. Raubitschek at 202–482–8010.

SUPPLEMENTARY INFORMATION: Pursuant to 35 U.S.C. 209(e), the Environmental Technology Laboratory, Oceanic and Atmospheric Research Laboratories publish this notice to announce its intent to grant Vaisala, Inc. and Sonoma Technology, Inc. co-exclusive licenses to the following patents:

U.S. Patent 5,592,171 entitled "Wind Profiling Radar"

U.S. Patent 5,872,535 entitled "Removing Buoy Motion from Wind Profiler Moment"

U.S. Patent 6,753,807 entitled "Combination N-way Power Divider/Combiner and Noninvasive Reflected Power Detection

The proposed co-exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed licenses may be granted unless written evidence is received that establishes that the grant of the licenses would not be consistent with 35 U.S.C. 209. Any comments, including an application for a license in any or all of the above-identified patents, must be mailed to the individual listed in the **ADDRESSES** heading.

Dated: May 3, 2005.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 05–10555 Filed 5–25–05; 8:45 am]

BILLING CODE 3510–65–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the Corporation), as part of its continuing efforts to solicit donations in furtherance of the purposes of the

national service laws, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirement on respondents can be properly assessed.

Currently, the Corporation for National and Community Service is soliciting comments concerning its proposed ephilanthropy efforts. The Corporation does not have an internal mechanism for soliciting and accepting donations. Currently, the Corporation has contracted with pay.gov, which is an authorized provider through the U.S. Department of Treasury. Donations are primarily received from individuals. With ephilanthropy, the Corporation will be able to receive donated gifts from members of the general public online—primarily individuals wishing to donate gifts between $10.00 (minimum) and $1,000.00.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 25, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service. Attn: Daphne Benbow, Corporate Affairs Associate, Office of Public Affairs, 1201 New York Avenue, NW., 10th floor, Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3460, Attention Daphne Benbow, Corporate Affairs Associate.

(4) Electronically through the Corporation's e-mail address system: *dbenbow@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Daphne Benbow at (202) 606–6718 or by e-mail at *dbenbow@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.*, permitting electronic submissions of responses.)

Background

Ephilanthropy reflects the Corporation's strong committment to effective solicitation, management and acknowledgment of donor relations in increasing the support of its programs. The information that will be collected will include, but is not limited to, the donor's intent (to which program they would like to donate), the donor's full contact information, the donor's payment information, and some optional questions about volunteering for a Corporation program and other interests of the Corporation.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Ephilanthropy.

OMB Number: None.

Agency Number: None.

Affected Public: Individuals, organizations and corporations.

Total Respondents: 240 (20 per month).

Frequency: Annually.

Average Time Per Response: 5 minutes.

Estimated Total Burden Hours: 100 hours.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 16, 2005.

Sandy Scott,

Director, Office of Public Affairs.

[FR Doc. 05–10554 Filed 5–25–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice; meeting of the Uniform Formulary Beneficiary Advisory Panel.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Monday, June 27, 2005, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Rich Martel, TRICARE Management Activity, Pharmacy Operations, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone 703–681–0064 ext. 3672, fax 703–681–1242, or e-mail at *richard.martel@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the uniform formulary as reflected in the recommendations of the Pharmacy and Therapeutics Committee coming out of that body's meeting in May 2005. The DoD P&T information and subject matter concerning drug classes reviewed for that meeting are available at *http://www.pec.ha.osd.mil.* The website for the Beneficiary Advisory Panel is at *http://www.tricare.osd.mil/pharmacy/bap.* Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to The Uniform Formulary Beneficiary Advisory Panel, c/o Mr. Richard Martel, *richard.martel@tma.osd.mil.* In order to

be considered by the panel prior to the meeting, statements must be submitted electronically no later than June 21, 2005. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour has been reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes. Private citizens wishing to speak at the meeting may sign up at the meeting on a first-come, first-served basis.

Dated: May 20, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–10490 Filed 5–25–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement Titled: Alexandria, LA, to the Gulf of Mexico Flood Control Improvements in the Chatlan Lake Canal Basin

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District, is initiating this study authorized by a July 23, 1997 resolution of the Committee on Transportation and Infrastructure of the U.S. House of Representatives. The resolution reads: "Resolved by the Committee on Transportation and Infrastructure of the U.S. House of Representatives, that the Secretary of the Army is required to review the report of the Chief of Engineers on the Mississippi River and Tributaries Project, published as House Document 308, Eighty-eighth Congress, Second Session, and other pertinent reports, to determine whether modifications of the recommendations contained therein are advisable at the present time in the interest of flood control, navigation, wetlands, conservation restoration, wildlife habitat, commercial and recreational fishing, saltwater intrusion, freshwater and sediment diversion, and other purposes in the area drained by the West Atchafalaya Basin Protection Levee, from Alexandria, Louisiana, to the Gulf of Mexico."

FOR FURTHER INFORMATION CONTACT: Questions concerning the Environmental Impact Statement (EIS) should be addressed to Mr. Nathan Dayan at U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2530, fax number (504) 862–2572 or by e-mail at *Nathan.S.Dayan@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The purpose of this analysis is to address the feasibility of a Federal project to reduce flooding problems and other water resources problems and needs in the Alexandria, LA area. Economic and environmental analysis would be used to determine the most practical plan, which would provide for the greatest overall public benefit.

1. *Proposed Action.* The proposed action would include the flood control improvements in the Chatlin lake canal basin in the Alexandria, LA area. The plan includes the enlargement of the upper reach (~14 miles) of the Chatlin Lake canal, south of the city of Alexandria, and the construction of a new diversion canal (~5 miles) between the Chatlin Lake canal and the Red River south of John H. Overton lock and dam. This plan would be considered with a gravity drainage structure through the south bank of the Red River levee. The material dredged for the construction and maintenance of the channels would be used for wetlands restoration and construction, to the maximum extent practicable.

2. *Alternatives.* Alternatives recommended for consideration presently include but not limited to: The construction of a shorter channel off of Chatlin Lake canal to the Red River above the lock and dam with a pump station, a green tree reservoir off of Chatlin Lake canal, improving hydraulic efficiency of Chatlin Lake canal by clearing and snagging or channel reshaping, and non structural flood proofing of structures.

3. *Scoping.* Scoping is the process for determining the scope of alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in the middle part of 2005. The meeting will be held in the vicinity of Alexandria, LA. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. *Significant Issues.* The tentative list of resources and issues to be evaluated in the EIS includes wetlands (marshes and swamps), aquatic, fisheries, wildlife, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. *Estimated Date of Availability.* Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available is in the fall of 2006.

Dated: May 11, 2005.

Peter J. Rowan,

Colonél, U.S. Army, District Engineer.

[FR Doc. 05–10544 Filed 5–25–05; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Proposed Disposal Site for Dredged material in the Middle Branch of the Patapsco River, at Masonville, Baltimore City/Application for a Corps Section 10/404 Individual Permit

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers (Corps) expects receipt of an application in

January 2006 from the State of Maryland Department of Transportation, Maryland Port Administration (MPA) for a Section 10/404 individual permit for the construction of a disposal site for dredged material in the Middle Branch of the Patapsco River, at Masonville, Baltimore City, MD. Based on preliminary discussions with the MPA, the Corps has determined that an environmental impact statement (EIS) is required for this proposed project. The applicant's stated purpose of the proposed project is to provide a disposal site to accommodate dredged material generated by dredging projects occurring over the next 5 to 10 years in the Baltimore Harbor area. The EIS will focus on the 5–10 year dredging needs within Baltimore Harbor and upland containment and beneficial use of dredged materials from the Port of Baltimore channel system in the Patapsco River and its tributaries. As part of this study, in accordance with the National Environmental Policy Act (NEPA) of 1969, an EIS will be prepared to document the plan formulation process and recommendations of this study.

DATES: A public scoping meeting is scheduled for June 15, 2005, at 7 p.m. Display material and staff will be available beginning at 6 p.m.

ADDRESSES: The meeting address is the Baum Auditorium at the Harbor Hospital; 3001 S. Hanover Street, Baltimore, MD 21225.

FOR FURTHER INFORMATION CONTACT: Questions or information about the proposed action and draft EIS can be addressed to Jon Romeo, Operations Division, Regulatory Branch, U.S. Army Corps of Engineers, ATTN: CENAB–OP–RMN, 10 South Howard Street, P.O. Box 1715, Baltimore, MD 21203–1715, telephone 410–972–6079; e-mail address: *jon.romeo@nab02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Baltimore Harbor study area is defined as the Patapsco River area west of the North Point-Rock Point line in the Patapsco River to include Old Road Bay, Bear Creek, Middle Branch, Northwest Branch, and Curtis Bay and the shoreline and open water between them. Currently dredged material from Baltimore harbor is being placed in the Hart-Miller Island (HMI) Containment Facility, and, in the near future, will be placed in the Cox Creek Dredged Material Containment Facility (DMCF). State legislative requirements prohibit placing dredged material in HMI after December 31, 2009. Management of the cover and closure of HMI may limit acceptance of dredged material placement capacity could occur beginning with the 2008 dredging season (Fall 2008). The purpose of the proposed Masonville disposal site, and the associated EIS is to determine an environmentally sound, economically feasible method for the placement or use of dredged material removed from harbor channels and new dredge areas. There is an estimated 16 million cubic yard shortfall in dredged material capacity within the harbor over the next 20 years. The applicant and the Corps are actively seeking public opinion, participation, and advice to be incorporated into the planning process and the selection of placement options for harbor dredged material. At this time, the projects under consideration include confined disposal sites at Masonville, BP-Fairfield, and Sparrows Point.

Alternatives to be addressed in the DEIS will include: The no action alternative and confined disposal facilities at Masonville, BP-Fairfield, and Sparrows Point. Beneficial uses, such as habitat creation or restoration may be associated with these options. Community enhancement may also be associated with these options, such as public access to waterfront areas, maritime heritage projects, community parks and trails. As part of the initial phase of the study, an objective screening criteria developed in 2002 through the State's Dredged Material Management Program (DMMP) process, will continue to be used to evaluate harbor sites based on current information obtained from the State of Maryland's DMMP, the Harbor Team, public and agency input, available data, and best professional judgment. Following the NEPA process, once projects are selected for consideration, a detailed analysis of the existing conditions will be undertaken; alternative plans will be developed, analyzed and compared; the impacts of those plans will be analyzed; and a recommended plan will be selected.

To solicit public input into the draft EIS and into the selection of a project or projects, a public scoping meeting is planned (*see* **DATES** and **ADDRESSES**).

The EIS will be integrated with analyses and consultation required by the National Environmental Policy Act (NEPA), seciton 10 of the River and Harbor Act, section 401 and section 404 of the Clean Water Act, section 7 of the Endangered Species Act, the Clean Air Act, the U.S. Fish and Wildlife Coordination Act, section 106 of the National Historic Preservation Act, Prime and Unique Farmlands, the Magnuson-Stevens Fishery Conservation and Management Act. All appropriate documentation (*i.e.*, section 7, section 106 coordination letters, and public and agency comments) will be obtained and included as part of the EIS. As part of the EIS process, recommendations will be based on an evaluation of the probable impact of the proposed activity on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefit, which may reasonably be expected to accrue from the proposal, will be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, among these are wetlands; fish and wildlife resources; cultural resources; land use; water and air quality; hazardous, toxic, and radioactive substances; threatened and endangered species; regional geology; aesthetics: environmental justice; navigation; cumulative impacts; and the general needs and welfare of the public. The draft EIS is expected for public release in March 2006.

Christina E. Correale,

Chief, Operations Division.

[FR Doc. 05–10543 Filed 5–25–05; 8:45 am]

BILLING CODE 3710–41–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 25, 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 20, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: National Longitudinal Transition Study–2 (NLTS2).
Frequency: One time.
Affected Public: Individuals or household; not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 4,432;
Burden Hours:— 2,085.
Abstract: NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services and achievements in multiple domains (*e.g.*, employment, postsecondary education). The study will inform special education policy development and support Individuals with Disabilities Education Act (IDEA) reauthorization.

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 2778. 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 Sheila Carey at her e-mail address *Sheila.Carey@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.

Office of the Undersecretary

Type of Review: Reinstatement.
Title: Follow Up Evaluation of the GEAR UP Program.
Frequency: One time.
Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 7,369.
Burden Hours: 3,996.
Abstract: The evaluation responds to legislative requirement in Pub. L. 105–244, Section G to evaluate and report on the effectiveness of projects funded under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. Using a quasi-experimental design, high school graduation and postsecondary enrollment as well as students' and parents' expectations for postsecondary education, their knowledge of the academic preparation needed and availability of financial resources and students' academic performance will be compared over time for students who participated in GEAR UP with students who did not participate in GEAR UP projects. Descriptive information about projects will also be collected.

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 2773. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–10506 Filed 5–25–05; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 27, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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 Acting 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.

Dated: May 20, 2005.

Leo Eiden,

Acting 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: System Clearance for Cognitive, Pilot and Field Test Studies.

Frequency: On occasion.

Affected Public: Individuals or household; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,500,

Burden Hours: 4,000.

Abstract: This is a request for a generic clearance for the National Center for Education Statistics to conduct various procedures to test questionnaires and survey procedures. These procedures include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2722. 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 202–245–6623. 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. 05–10507 Filed 5–25–05; 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 25, 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 23, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Client Assistance Program (CAP) Report.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 350.

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

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 2780. 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 Sheila Carey at her e-mail address *Sheila.Carey@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. 05–10545 Filed 5–25–05; 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 25, 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 23, 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: Reinstatement.

Title: Field Test Activities in 2005/2006 for the 2007–08 Schools and Staffing Survey and the 2008–09 Teacher Follow-up Survey Procedures.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 7,229.

Burden Hours: 5,058.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures that are planned for the next full-scale Schools and Staffing Survey (SASS) and Teacher Follow-up Survey (TFS). Policymakers, researchers and practitioners at the national, state and local levels use SASS data which are representative at the national and state levels. Respondents include public and private school principals, teachers and school and local educational agencies (LEA) staff persons.

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 2781. 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. 05–10546 Filed 5–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal Need Analysis Methodology for the 2006–2007 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory "Federal Need Analysis Methodology" to determine a student's expected family contribution (EFC) for award year 2006–2007 under Part F of Title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Part F Programs include the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs (Title IV, HEA Programs).

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 2006–2007 the Secretary is charged with updating the Income Protection Allowance, Adjusted Net Worth of a Business or Farm, and the Assessment Schedules and Rates to account for inflation that took place between December 2004 and December 2005. However, since the Secretary must publish these tables before December 2005, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all urban consumers for 2004. The Secretary estimates that the increase in the Consumer Price Index for all urban consumers for the period December 2004 through December 2005 will be 2.3 percent. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 2006–2007 has been updated in section 3 of this notice. Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker compared to a one-worker family for meals away from home, apparel and upkeep, transportation, and housekeeping services. The Employment Expense Allowance table for the award year 2006–2007 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The income protection allowance for the dependent student is $2,550. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 2006–2007 are:

Family size	Number in college				
	1	2	3	4	5
2	$14,430	$11,960	.....	.....	.....
3	17,970	15,520	$13,050	.....	.....
4	22,200	19,730	17,270	$14,800	
5	26,190	23,720	21,270	18,800	$16,340
6	30,640	28,170	25,710	23,240	20,790

For each additional family member add $3,460.

For each additional college student subtract $2,460.

The income protection allowances for single independent students and independent students without dependents other than a spouse for award year 2006–2007 are:

Marital status	Number in college	IPA
Single	1	$5,790
Married	2	5,790
Married	1	9,260

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since—(1) The income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1 to $105,000	$0 + 40% of NW.
$105,001 to $310,000	$42,000 + 50% of NW over $105,000.
$310,001 to $515,000	$144,500 + 60% of NW over $310,000.
$515,001 or more	$267,500 + 100% of NW over $515,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

Dependent students			Dependent students		
If the age of the older parent is—	and there are		If the age of the older parent is—	and there are	
	two one parents	one parent		two one parents	one parent
	then the education savings and asset protection allowance is—				
25 or less	0	0	31	15,700	7,200
26	2,600	1,200	32	18,300	8,400
27	5,200	2,400	33	20,900	9,600
28	7,800	3,600	34	23,500	10,800
29	10,500	4,800	35	26,100	12,000
30	13,100	6,000	36	28,700	13,200
			37	31,400	14,400
			38	34,000	15,600
			39	36,600	16,800
			40	39,200	18,000

Dependent students		
If the age of the older parent is—	and there are	
	two one parents	one parent
41	40,200	18,400
42	41,200	18,800
43	42,200	19,200
44	43,200	19,700
45	44,300	20,100
46	45,400	20,600
47	46,600	21,000
48	47,700	21,500
49	48,900	22,100
50	50,100	22,600
51	51,600	23,000
52	52,900	23,600
53	54,500	24,100
54	55,800	24,800
55	57,500	25,400
56	58,900	26,000
57	60,600	26,600
58	62,400	27,400
59	64,200	28,000
60	66,100	28,800
61	68,000	29,500
62	70,000	30,300
63	72,300	31,100
64	74,400	32,000
65 or older	76,900	32,900

Independent students without dependents other than a spouse		
If the age of the student is—	and they are	
	married	single
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,600	1,200
27	5,200	2,400
28	7,800	3,600
29	10,500	4,800
30	13,100	6,000
31	15,700	7,200
32	18,300	8,400
33	20,900	9,600
34	23,500	10,800
35	26,100	12,000
36	28,700	13,200
37	31,400	14,400
38	34,000	15,600
39	36,600	16,800

Independent students without dependents other than a spouse		
If the age of the student is—	and they are	
	married	single
40	39,200	18,000
41	40,200	18,400
42	41,200	18,800
43	42,200	19,200
44	43,200	19,700
45	44,300	20,100
46	45,400	20,600
47	46,600	21,000
48	47,700	21,500
49	48,900	22,100
50	50,100	22,600
51	51,600	23,000
52	52,900	23,600
53	54,500	24,100
54	55,800	24,800
55	57,500	25,400
56	58,900	26,000
57	60,600	26,600
58	62,400	27,400
59	64,200	28,000
60	66,100	28,800
61	68,000	29,500
62	70,000	30,300
63	72,300	31,100
64	74,400	32,000
65 or older	76,900	32,900

Independent students with dependents other than a spouse		
If the age of the student is—	and they are	
	married	single
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,600	1,200
27	5,200	2,400
28	7,800	3,600
29	10,500	4,800
30	13,100	6,000
31	15,700	7,200
32	18,300	8,400
33	20,900	9,600
34	23,500	10,800
35	26,100	12,000
36	28,700	13,200
37	31,400	14,400
38	34,000	15,600

Independent students with dependents other than a spouse		
If the age of the student is—	and they are	
	married	single
39	36,600	16,800
40	39,200	18,000
41	40,200	18,400
42	41,200	18,800
43	42,200	19,200
44	43,200	19,700
45	44,300	20,100
46	45,400	20,600
47	46,600	21,000
48	47,700	21,500
49	48,900	22,100
50	50,100	22,600
51	51,600	23,000
52	52,900	23,600
53	54,500	24,100
54	55,800	24,800
55	57,500	25,400
56	58,900	26,000
57	60,600	26,600
58	62,400	27,400
59	64,200	28,000
60	66,100	28,800
61	68,000	29,500
62	70,000	30,300
63	72,300	31,100
64	74,400	32,000
65 or older	76,900	32,900

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750
−$3,409 to $12,900	−22% of AAI.
$12,901 to $16,200	$2,838 + 25% of AAI over $12,900.
$16,201 to $19,500	$3,663 + 29% of AAI over $16,200.
$19,501 to $22,800	$4,620 + 34% of AAI over $19,500.
$22,801 to $26,100	$5,742 + 40% of AAI over $22,800.
$26,101 or more	$7,062 + 47% of AAI over $26,100.

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750
−$3,409 to $12,900	22% of AAI.
$12,901 to $16,200	$2,838 +25% of AAI over $12,900.
$16,201 to $19,500	$3,663+29% of AAI over $16,200.
$19,501 to $22,800	$4,620+34% of AAI over $19,500.
$22,801 to $26,100	$5,742+40% of AAI over $22,800.
$26,101 or more	$7,062+47% of AAI over $26,100.

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,100 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four tables for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of part F of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data. Also, a provision in the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), directs the Advisory Committee on Student Financial Assistance to examine the efficiency, effectiveness and fairness of the current procedures to update formula offsets and allowances. The Secretary considered the preliminary findings of this analysis as she reviewed the Statistics of Income file data.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000	$15,000 & up	All
Alabama	3	2	2
Alaska	2	1	0
Arizona	4	3	2
Arkansas	3	2	3
California	7	6	5
Colorado	4	3	3
Connecticut	7	6	4
Delaware	4	3	3
District of Columbia	7	6	6
Florida	2	1	0
Georgia	5	4	3
Hawaii	4	3	4
Idaho	5	4	3
Illinois	5	4	2
Indiana	4	3	3
Iowa	5	4	3
Kansas	5	4	3
Kentucky	5	4	4
Louisiana	2	1	2
Maine	6	5	4
Maryland	7	6	5
Massachusetts	6	5	4
Michigan	5	4	3
Minnesota	6	5	4
Mississippi	3	2	2
Missouri	4	3	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	2	1	1
New Hampshire	4	3	1
New Jersey	8	7	4
New Mexico	4	3	3
New York	8	7	5
North Carolina	6	5	4
North Dakota	2	1	1
Ohio	6	5	4
Oklahoma	4	3	3
Oregon	7	6	5

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000	$15,000 & up	All
Pennsylvania	5	4	3
Rhode Island	7	6	4
South Carolina	5	4	3
South Dakota	1	0	0
Tennessee	1	0	0
Texas	2	1	0
Utah	5	4	4
Vermont	6	5	3
Virginia	5	4	3
Washington	2	1	0
West Virginia	3	2	2
Wisconsin	7	6	4
Wyoming	1	0	0
Other	3	2	2

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

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program)

Dated: May 23, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–10584 Filed 5–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–019]

East Tennessee Natural Gas, LLC; Notice of Complaince Filing

May 20, 2005.

Take notice that, on May 17, 2005, East Tennessee Natural Gas, LLC (East Tennessee) submitted a compliance filing pursuant to the Commission's November 26, 2004 Order in the above-captioned docket.

East Tennessee states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as all 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2669 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–251–006 and RP04–248–006]

El Paso Natural Gas Company; Notice of Report Filing

May 20, 2005.

Take notice that on May 17, 2005, El Paso Natural Gas Company (EPNG) submitted a presentation entitled "Path Allocation of Firm Entitlements" as part of the above listed proceedings.

EPNG states that the presentation was made at a May 10, 2005 customer meeting and copies of the report were served on parties on the official service.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 27, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2657 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–298–001]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

May 20, 2005.

Take notice that on May 18, 2005, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1, the following tariff sheets to be effective June 1, 2005:

Substitute Sixth Revised Sheet No. 15
Substitute Sixth Revised Sheet No. 21
Substitute Sixth Revised Sheet No. 26
Substitute Sixth Revised Sheet No. 28
Substitute Sixth Revised Sheet No. 30
Substitute Fifth Revised Sheet No. 31A
Substitute Fifth Revised Sheet No. 31C

Enbridge KPC states that this filing is made to supplement Enbridge KPC's filing on April 29, 2005, in Docket No. RP05–298–000 to correct and clarify which Fuel Reimbursement Percentages would apply to specified time periods. Enbridge KPC states this supplemental does not make any substantive changes to the April 29, 2005 filing.

Enbridge KPC states that copies of the filing are being sent to all customers, state agencies and parties to this 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 on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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.

Comment Date: 5 pm Eastern Time on May 25, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2667 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–354–000]

Gulf South Pipeline Company, LP; Notice of Application

May 20, 2005.

Take notice that on May 13, 2005, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway, Houston, Texas 77046, filed in Docket No. CP05–354–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to modify the working, base and native gas storage levels at its Bistineau Gas Storage Facility located in Bienville and Bossier Parishes, Louisiana, in order to reflect the results of an Inventory Verification Study. Specifically, Gulf South proposes to reclassify 12.9 Bcf of base gas capacity as working gas capacity and offer that capacity to the marketplace as interruptible storage service; and reclassify 13.5 Bcf of native gas as base gas at its Bistineau facility.

This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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 J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas 77046, Phone: (713) 544–7309, Fax: (713) 544–3540, or Email: *kyle.stephens@gulfsouthpl.com*.

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.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental

commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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: June 10, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2659 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

May 20, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER05–6–023; EL04–135–025; EL02–111–043; EL03–212–039.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc et al submits joint revisions to the Joint Operating Agreement with PJM Interconnection, LLC under ER05–6 et al.

Filed Date: 05/17/2005.

Accession Number: 20050519–0228.

Comment Date: 5 p.m. eastern time on Tuesday, June 7, 2005.

Docket Numbers: ER05–651–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits revised version of the interconnection agreement under ER05–651.

Filed Date: 05/17/2005.

Accession Number: 20050519–0229.

Comment Date: 5 p.m. eastern time on Tuesday, June 7, 2005.

Docket Numbers: ER05–977–000.

Applicants: Union Power Partners L.P.

Description: Union Power Partners, LP submits a Rate Schedule which specifies its rates for providing cost-based reactive support and voltage control from Generation Sources Service etc under ER05–977.

Filed Date: 05/17/2005.

Accession Number: 20050518–0166.

Comment Date: 5 p.m. eastern time on Tuesday, June 7, 2005.

Docket Numbers: ER05–978–000.

Applicants: Virginia Electric Power Company.

Description: Virginia Electric & Power Co submits the Batesville Balancing Authority Area Services Agreement with J Aron & Co under ER05–978.

Filed Date: 05/17/2005.

Accession Number: 20050518–0162.

Comment Date: 5 p.m. eastern time on Tuesday, June 7, 2005.

Docket Numbers: ER05–979–000.

Applicants: Access Energy Cooperative.

Description: Access Energy Coop submits its informational 2005 rate redetermination filing as required under its Contract for Wheeling of Electric Power with Northeast Missouri Electric Power Coop under ER05–979.

Filed Date: 05/17/2005.

Accession Number: 20050519–0272.

Comment Date: 5 p.m. eastern time on Tuesday, June 7, 2005.

Docket Numbers: ER01–1403–003; ER01–2968–004; ER01–845–003.

Applicants: FirstEnergy Operating Companies.

Description: FirstEnergy Service Co submits modifications to the market based-rate power sales tariff etc under ER01–1403 et al.

Filed Date: 05/16/2005.

Accession Number: 20050518–0164.

Comment Date: 5 p.m. eastern time on Monday, June 6, 2005.

Docket Numbers: ER03–1079–004; ER02–47–004; ER95–216–005; ER03–725–004; ER02–309–004; ER02–1016–002; ER99–2322–004; ER01–905–004; ER00–1851–004; EL05–83–000.

Applicants: Aquila, Inc.

Description: Aquila, Inc, Aquila Long Term, Inc et al submits a compliance filing, pursuant to FERC's 4/14/05 Order under ER03–1079 et al.

Filed Date: 05/13/2005.

Accession Number: 20050518–0107.

Comment Date: 5 p.m. eastern time on Friday, June 3, 2005.

Docket Numbers: ER05–667–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Dakota Wind Harvest, Inc and FPL Energy, LLC submit responses to the April 28, 2005 Staff data request relating to matters concerning the Large Generator Interconnection Agreement, etc. under ER05–667.

Filed Date: 05/13/2005.

Accession Number: 20050518–0108.

Comment Date: 5 p.m. eastern time on Friday, June 3, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding (ER05– –000 docket numbers), interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling line to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For Assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or

call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2670 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11810–004, 5044–008, and 2935–015]

City of Augusta, Avondale Mills Inc., Enterprise Mill LLC; Notice of Availability of Draft Environmental Assessment

May 20, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the applications for an Original Major License for the Augusta Canal Project, a New Major License for the Sibley Mill Project, and a Subsequent Minor License for the Enterprise Mill Project. Staff prepared a single environmental assessment (EA) for all three projects, which are located on the Canal, adjacent to the Savannah River, Richmond County, Augusta, GA.

The EA contains staff's analysis of the potential environmental effects of the projects and concludes that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Augusta Canal Project, P–11810; Sibley Mill Project, P–5044; Enterprise Mill Project, P–2935 to all comments. For further information, please contact Monte TerHaar at (202) 502–6035 or at *monte.terhaar@ferc.gov*.

Comments 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. The Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2665 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000, CP04–293–000, and CP04–358–000]

KeySpan LNG, L.P., Algonquin Gas Transmission, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Keyspan LNG Facility Upgrade Project

May 20, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by KeySpan LNG, L.P. (KeySpan LNG) and Algonquin Gas Transmission, L.L.C. (Algonquin), respectively, in the above-referenced dockets (collectively referred to as the KeySpan LNG Facility Upgrade Project).

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that If KeySpan LNG is able to modify its facility so that current federal safety standards are met, and if the project is constructed and operated in accordance with KeySpan LNG's and Algonquin's proposed mitigation and our recommended mitigation measures, we believe that the proposed project would have limited adverse environmental impact. The final EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The final EIS addresses the potential environmental effects of the construction and operation of the following LNG and natural gas pipeline facilities in Providence, Rhode Island:

- A ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of 71,500 to 145,000 cubic meters;
- Two 16-inch-diameter liquid unloading arms and a 24-inch-diameter liquid unloading line from the arms to the LNG storage tank;
- Two vapor return blowers, a 12-inch-diameter vapor arm, and an 8-inch-diameter vapor return line;
- Four boil-off-gas compressors and a boil-off gas condenser;
- A two-stage LNG pumping system;
- An indirect fired vaporizer system with a capacity of 375 million cubic feet per day (MMcfd);
- Operations control buildings;
- Ancillary utilities and LNG facilities;
- A 1.44-mile-long 24-inch-diameter natural gas pipeline;
- A receipt point meter station and 30-inch-diameter pig launcher; and
- A 24-inch-diameter tap valve and 30-inch-diameter pig receiver at the point where the new pipeline would tie into Algonquin's existing G–12 Lateral pipeline system.

The purpose of KeySpan LNG's proposed upgrade is to convert the existing KeySpan LNG storage facility to an LNG terminal capable of receiving marine deliveries, increase the facility's existing vaporization capacity from 150 MMcfd to 525 MMcfd, augment the supply of LNG to fill the region's LNG storage facilities to meet peak day needs, and provide 375 MMcfd of new, firm, reliable baseload supply of natural gas to Rhode Island and the New England region.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the final EIS have been mailed to federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the final EIS; libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run

concurrently. The Commission's decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site *(http://www.ferc.gov)* using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2668 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–36–000 and CP04–41–000]

Weaver's Cove Energy, L.L.C., Mill River Pipeline, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Weaver's Cove LNG Project

May 20, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Weaver's Cove Energy, L.L.C. and Mill River Pipeline, L.L.C. (collectively referred to as Weaver's Cove Energy) in the above-referenced dockets.

The staff prepared the final EIS to satisfy the requirements of the National Environmental Policy Act (NEPA). The final EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives. The final EIS concludes that if the Weaver's Cove LNG Project is constructed and operated in accordance with Weaver's Cove Energy's proposed mitigation and the FERC staff's recommended mitigation measures, the proposed action would meet federal safety standards, can be operated safely, and would have limited adverse environmental impact. In addition, the final EIS concludes that implementation of the Coast Guard's security plan that controls the LNG vessels operating through Narragansett Bay to/from the proposed terminal would further ensure the public safety.

The final EIS was also prepared to help satisfy the requirements of the Massachusetts Environmental Policy Act (MEPA). The Massachusetts Executive Office of Environmental Affairs (EOEA) issued a Certificate to Weaver's Cove Energy on August 28, 2003, that established a Special Review Procedure to guide the MEPA review of the Weaver's Cove LNG Project. This Special Review Procedure provides for a coordinated NEPA/MEPA review and allows the draft and final EISs to serve as the draft and final Environmental Impact Reports (EIR) required under MEPA, provided the EISs address MEPA's EIR requirements, as specified in the MEPA scope for the project that was issued concurrently with the August 28, 2003 Special Review Procedure. Pursuant to the established Special Review Procedure, the EOEA reviewed the draft EIS and issued a Certificate on October 1, 2004 following the close of the comment period. In the Certificate the Secretary of the EOEA determined that the draft EIS did not sufficiently address several issues critical to understanding the project design and how the project meets state regulatory requirements and thus required Weaver's Cove Energy to prepare a supplemental draft EIR. The Secretary of the EOEA stated that its decision was directed at the deficiencies of the joint federal\state document only as it relates to the state requirements under MEPA. On December 17, 2004, the Secretary of the EOEA determined that the supplemental draft EIR, submitted by Weaver's Cove Energy on November 1, 2004, did not adequately and properly comply with the MEPA and its implementing regulations. Because the decision of the Secretary of the EOEA was based on the inadequacy of the supplemental draft EIR to meet state regulatory requirements, the FERC continued to complete its analysis of the project for federal review purposes and to prepare the final EIS.

The final EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 145,000 cubic meters (m^3);
- A 200,000 m^3 (equivalent to 4.4 billion standard cubic feet of gas) full containment LNG storage tank;
- Vaporization equipment, sized for a normal sendout of 400 million cubic feet per day (MMcfd) and a maximum sendout of 800 MMcfd;
- Four LNG truck loading stations;
- Ancillary utilities, buildings, and service facilities;
- Two 24-inch-diameter natural gas sendout pipelines, totaling approximately 6.1 miles in length; and
- Two meter and regulation stations.

The purpose of the Weaver's Cove LNG Project is to provide: a new LNG import terminal and competitive source of imported LNG in the New England market area; a new facility for the storage of LNG; access to natural gas reserves in production areas throughout the world that are inaccessible by conventional pipelines; a new supply of natural gas to New England; strengthened gas supply to southeastern Massachusetts and Rhode Island; and a competitive source of LNG delivered by truck to LNG storage facilities throughout the region.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the final EIS have been mailed to Federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the final EIS; libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. The Commission's decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC

Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2658 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Extension of Time To Commence and Complete Construction and Soliciting Comments, Motions To Intervene, and Protests

May 20, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Extension of Time to Commence and Complete Construction.

b. *Project No:* 11214–014.

c. *Date Filed:* March 25, 2005.

d. *Applicant:* City of Carlyle, Illinois (Applicant or Carlyle).

e. *Name and Location of Project:* The Carlyle Hydroelectric Project is to be located at the U.S. Army Corps of Engineers' Carlyle Dam on the Kaskaskia River near the City of Carlyle in Clinton County, Illinois.

f. *Filed Pursuant to:* Public Law 108–12.

g. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K St., NW., Suite 330, Washington, DC 20005, (202) 408–5400.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* June 20, 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–11214–014) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners 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 an intervener 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.

j. *Description of Application:* Public Law 108–12 authorizes the Commission to extend the time during which the licensee is required to commence the construction of the project for three consecutive 2-year periods beyond June 26, 2001. The Applicant accordingly requests that the deadline for commencement of project construction be extended to July 25, 2007, and that the deadline for completion of construction also be extended.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" 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. 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.

n. 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 the number of copies provided by the Commission's regulations 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 Applicant specified in the particular application.

o. 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2664 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–000]

California Independent System Operator Corporation; Notice of FERC Staff Participation

May 20, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on May 20, 2005, members of its staff will participate in a conference call on Congestion Revenue Rights (CRR) Study 2, hosted by the CAISO. The call will discuss the process for submitting short-term CRR nomination requests and answer participants' questions.

Sponsored by the CAISO, the meeting is open to all stakeholders, and staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in Docket No. ER02–1656–000.

For further information, contact Katherine Gensler at

katherine.gensler@ferc.gov; (916) 294–0275.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2660 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–718–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

May 20, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on May 20, 2005, members of its staff will participate in a conference call on settlement of pre-dispatched inter-tie bids, hosted by the California Independent System Operator (CAISO). This call is a follow-up to the April 28 stakeholder meeting, and is an opportunity for stakeholder feedback.

Sponsored by the CAISO, the meeting is open to all stakeholders, and staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in Docket No. ER05–718–000.

For further information, contact Katherine Gensler at *Katherine.gensler@ferc.gov.* (916) 294–0275.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2661 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Florida Public Service Commission Workshop Concerning Proposed Grid Florida RTO

May 20, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend a Florida Public Service Commission workshop, to be held on May 23, 2005 at 9:30 a.m. (EST) in Hearing Room 148 of the offices of the Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399–0850. The Florida Public Service Commission workshop, in its Docket No. 020233–EI, will include an ICF Consulting Resources, LLC presentation and discussion of the results of its cost benefit study of the proposed GridFlorida Regional Transmission Organization.

The discussion may address matters at issue in Docket No. RT01–67, *GridFlorida, LLC.*

The meeting is open to the public.

For more information, contact Robert T. Machuga, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–6004 or *robert.machuga@ferc.gov.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2663 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–360–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Informal Settlement Conference

May 20, 2005.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (EST) on Thursday, May 26, 2005, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll-free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAC to 202–208–2106 with the required accommodations.

For additional information, please contact Arnold H. Meltz at (202) 502–8649 or Moira B. Notargiacomo at (202) 502–8083.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2666 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Noxious Plant Workshop, Michigan; Notice of Intent To Conduct Public Workshop on Noxious Plants

May 20, 2005.

On June 7, 2005, the Commission staff will host a public workshop on noxious plants, such as purple loosestrife and Eurasian water milfoil. The main objectives of the workshop are: (1) To gain an understanding of noxious plants and how they affect the management of reservoir resources at hydropower projects; (2) to discuss hydro project requirements and different monitoring methods and schedules; and (3) to exchange information and improve coordination between licensees of hydropower projects, federal and state agencies, and technical experts on effective noxious plant control and eradication methods.

The workshop will be held on June 7, 2005, at the Woldumar Nature Center located at 5739 Old Lansing Road, Lansing, MI 48917, from 9 a.m. till 5 p.m. (EST). All parties interested in this issue are invited to attend and participate.

Any questions about this notice should be directed to the workshop coordinator, CarLisa M. Linton, at the Federal Energy Regulatory Commission, (202) 502–8416 or *carlisa.linton-peters@ferc.gov.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2662 Filed 5–25–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0028; FRL–7918–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Certification In Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Point Source Category (Renewal), EPA ICR Number 2015.02, OMB Control Number 2040–0242

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew and existing approved collection. This ICR is scheduled to expire on May 31, 2005.Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0028, to (1) EPA online using EDOCKET (our preferred method), by email to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Faulk. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202.564.0768; fax number: 202.501.2399; email address: *faulk.jack@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 30, 2004 (69 FR 52883), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0028, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Point Source Category (Renewal).

Abstract: The Environmental Protection Agency (EPA) imposed minimum monitoring requirements on bleached papergrade kraft and soda (subpart B) mills under 40 CFR part 430 as part of the final Cluster Rules promulgated on April 15, 1998. The provisions required direct and indirect discharging subpart B mills to monitor their effluent for certain pollutants, including chloroform, at specified frequencies. Subsequently, EPA has promulgated an amendment to the Cluster Rules that allows direct and indirect discharging subpart B mills to demonstrate compliance with applicable chloroform limitations and standards under 40 CFR part 430 in lieu of monitoring at a fiber line required by 40 CFR 430.02 by certifying (1) that the fiber line is not using elemental chlorine or hypochlorite as bleaching agents and (2) that it also maintains certain process and operating conditions identified during the initial compliance demonstration period of not less than two years, where the facility must monitor for chloroform at the minimum frequency required by 40 CFR 430.02, at a minimum, to demonstrate compliance with applicable chloroform limitations. These mills must submit a report summarizing the results of the initial compliance demonstration period and subsequently submit periodic certification reports confirming that the participating fiber line continues to operate within the range of process and operating conditions documented during the initial compliance demonstration period.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average six hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operations that chemically pulp wood using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard.

Estimated Number of Respondents: 80.

Frequency of Response: not less than annually for direct dischargers and less than twice annually for indirect dischargers.

Estimated Total Annual Hour Burden: 480.

Estimated Total Reduction in Annual Cost: $31,000, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: May 18, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–10476 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0017; FRL–7918–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Protection of Stratospheric Ozone: Request for Applications for Critical Use Exemption From the Phaseout of Methyl Bromide (Renewal), EPA ICR Number 2031.02, OMB Control Number 2060–0482

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0017 (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marta Montoro, Office of Air and Radiation, Stratospheric Protection Division (6205J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9321; fax number: (202) 343–2338; email address: *montoro.marta@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 11, 2005, (70 *FR* 7254), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment and has addressed it below.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0017, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Protection of Stratospheric Ozone: Request for Applications for Critical Use Exemption from the Phaseout of Methyl Bromide (Renewal).

Abstract: With this Information Collection Request (ICR), EPA's Office of Air and Radiation (OAR) and Office of Pollution Prevention and Toxic Substances (OPPTS), are continuing the existing request for critical use exemption applications for methyl bromide, under the Clean Air Act (CAA) and in accordance with U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). This information is collected so that the U.S. government can submit a technically valid and robust methyl bromide critical use exemption Nomination to the Ozone Secretariat of the United Nations Environment Programme on an annual basis. Since 2002, this information has primarily been collected through agricultural consortia, and also through individuals who have submitted applications to EPA. If an applicant indicates that the application contains Confidential Business Information (CBI), that information will be treated as such by EPA. Responses to the collection of information are required for users to obtain a critical use exemption benefit. EPA may consider a different format for the application in conjunction with this Information Collection Request Renewal, in order to reduce Agency burden during the compilation of the annual Nomination.

EPA received one comment on the Notice published on February 11, 2005 (70 *FR* 7254) requesting the Agency to not exempt any methyl bromide for critical uses and opposing use of methyl bromide. The CAA allows the Agency to create an exemption for critical uses to the extent consistent with the Protocol. The Protocol authorizes exemptions to the extent decided by the Parties.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 100.

Estimated Number of Respondents: 100.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 5,000.

Estimated Total Annual Cost: $199,300, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $199,300 annual labor costs.

Changes in the Estimates: There is a decrease of 92,605 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to adjustments to the estimates based on changed labor rates and the change in the number of respondents over the last three years.

Dated: May 18, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–10477 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0031; FRL–7918–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NPDES and Sewage Sludge Monitoring Reports (Renewal), EPA ICR Number 0229.16, OMB Control Number 2040–0004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0031, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kawana Cohen, Office of Wastewater Management, 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2435; fax number: 202–564–6384; e-mail address: *cohen.kawana@epa.gov,*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 23, 2004 (69 FR 68142) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d) and received one comment. The comment was not related to the burden hours reported in this ICR.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0031, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NPDES and Sewage Sludge Monitoring Reports (Renewal).

Abstract: This ICR estimates the current monitoring, recordkeeping and costs associated with submitting and reviewing Discharge Monitoring Reports (DMRs), sewage sludge monitoring reports, and other monitoring reports under the Environmental Protection Agency's (EPA) NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source dischargers to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples and perform other types of discharge monitoring and report the results to the permitting authority (EPA or an authorized NPDES State). Sample monitoring, analysis, and reporting frequencies vary by permit, but for the most part, must be performed at least annually for all permitted discharges. Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum information necessary to achieve the Agency's goal and satisfy regulatory standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are

identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Permitted municipal and non-municipal point source dischargers and sewage sludge facilities, and States and Territories authorized to administer and implement the NPDES permit program.

Estimated Number of Respondents: 81,988.

Frequency of Response: annually and other.

Estimated Total Annual Hour Burden: 14,164,582.

Estimated Total Annual Cost: $5,131,000 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 57,375 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to adjustments to the estimates.

Dated: May 17, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–10482 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0025; FRL–7918–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper and Paperboard Point Source Category (Renewal), EPA ICR Number 1878.02, OMB Control Number 2040–0243

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2005.Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0025, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Office of Wastewater Management, 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0768; fax number: (202) 501–2399; e-mail address: *faulk.jack@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 30, 2004 (69 *FR* 52883), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0025, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (Renewal).

Abstract: The Environmental Protection Agency (EPA) imposed minimum monitoring requirements on bleached papergrade kraft and soda (subpart B) and papergrade sulfite

(subpart E) mills under 40 CFR part 430 as part of the effluent limitations guidelines and standards promulgated on April 15, 1998. As a result, the permitting and pretreatment control authority requires applicable facilities subject to subparts B or E to monitor their effluent for adsorbable organic halides (AOX), 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), 2,3,7,8-tetrachlorodibenzofuran (TCDF), chloroform, and 12 chlorinated phenolics at specified frequencies. See 40 CFR 430.02. Under 40 CFR 122.41(e)(4), the discharger must then report these monitoring results to the permitting or pretreatment control authority using either Discharge Monitoring Reports (DMRs) or Periodic Compliance Reports (PCRs). These minimum monitoring requirements and corresponding reporting requirements are necessary to demonstrate compliance with the effluent limitations guidelines and standards promulgated at 40 CFR part 430, subparts B and E.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 361 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operations that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard; and those operations that chemically pump wood fiber using papergrade sulfite methods to produce pulp and/or paper.

Estimated Number of Respondents: 138.

Frequency of Response: No less than annually for direct dischargers and no less than twice annually for indirect dischargers.

Estimated Total Annual Hour Burden: 37,544.

Estimated Total Annual Cost: $15,086,000, which includes $0 annual capital/startup costs, $13,819,000 annual O&M costs and $1,267,000 annual labor costs.

Changes in the Estimates: There is slight increase in the burden hours currently identified in the OMB Inventory of Approved ICR Burdens which is due to an adjustment in the number of respondents. There is a decrease in the annual cost due to the fact that the one-time capital costs incurred under the original ICR are not included in this renewal ICR.

Dated: May 18, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–10495 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[R08–OAR–2005–UT–0005; FRL–7916–9]

Adequacy Determination for the Ogden City Area Carbon Monoxide Maintenance State Implementation Plan for Transportation Conformity Purposes; State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budget for 2021 in the Ogden, Utah Carbon Monoxide Maintenance Plan, that was submitted by Utah Governor Olene S. Walker on November 29, 2004, is adequate for transportation conformity purposes. 40 CFR 93.118(e)(2) requires that EPA declare an implementation plan submission's motor vehicle emissions budget adequate for conformity purposes prior to the budget being used to satisfy the conformity requirements of 40 CFR part 93. As a result of our finding, the Wasatch Front Regional Council of Governments, the Utah Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budget from this submitted maintenance plan for future transportation conformity determinations.

DATES: This finding is effective June 10, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6445, *kimes.jeffrey@epa.gov.*

The letter documenting our finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.*

SUPPLEMENTARY INFORMATION: Throughout this document "we", "us", or "our" are used to mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Utah Division of Air Quality on May 2, 2005, stating that the motor vehicle emission budget in the submitted Ogden, Utah Carbon Monoxide Maintenance Plan is adequate. This finding has also been announced on our conformity Web site at *http://www.epa.gov/otaq/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they demonstrate conformity. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

The process for determining the adequacy of a transportation conformity budget is described at 40 CFR 93.118(f).

For the reader's ease, we have excerpted the motor vehicle emission budget from the Ogden, Utah Carbon Monoxide Maintenance Plan and it is as follows: Motor vehicle emissions budget for the year 2021 is 73.02 tons per day of CO. 40 CFR 93.118(e)(1) requires that previously approved budgets for years other than 2021 must still be used in any conformity determination until the maintenance plan is fully approved by EPA.

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

Dated: May 10, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 05–10496 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0369; FRL–7711–5]

Chloroneb Risk Assessment; Related Document, and Input on Risk Management; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the fungicide, chloroneb and opens a public comment period on these documents. The public is also encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for Chloroneb through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0369, must be received on or before July 25, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8041; e-mail address:*livingston.wilhelmena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0369. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this

unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0369. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0369. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0369.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP-2004–0369. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1. .

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, and related documents for chloroneb, a fungicide, and encouraging the public to suggest risk management ideas or proposals. Chloroneb is a systemic fungicide currently registered for seed treatment uses on beans (including cowpeas), cotton, lupine, soybeans, and sugar beets to protect against a variety of diseases such as seed rot, damping-off, blights, and other seedling diseases. Chloroneb is also registered on golf course and ornamental turf grasses and ornamental plants to control blights. EPA developed the risk assessments for chloroneb through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The Agency cannot determine a safety finding for chloroneb at this time, due to numerous data gaps, some of which are deemed key. The carcinogenic potential could not be assessed since the 2–year chronic toxicity/carcinogenicity rat study is unacceptable and a mouse carcinogenicity study was not performed. Chloroneb is classified as "Data are Inadequate for an Assessment of Carcinogenic Potential." Confirmation that the seed treatment constitute food uses requiring tolerances and the reevaluation of the database has led to the conclusion that numerous toxicology and residue chemistry data are now required.

In addition, there is a concern in residential settings from entering previously treated areas with chloroneb such as recreational areas, home lawns where children might play or golf courses that could lead to exposures for adults. There is also a concern for occupational handlers in the following scenarios: The mixer/loader/applicator

for the turf/woody ornamentals/bedding plants/ferns, the loader/applicator for the use of wettable powder (WP) formulations in commercial seed treatments, the on-farm seed treatments except sugar beets, loading/applying liquid for commercial soybean treatment, and mixing/loading wettable powder for groundboom application on turf. There is also a concern for occupational postapplication exposure resulting from entering areas previously treated with chloroneb.

The Agency estimates that two foliar turf uses exceed the endangered species and restricted use levels of concern for freshwater aquatic organisms. In addition, because there was some mortality observed in the bobwhite quail acute dietary study, risks to endangered bird species from foliar turf and ornamental uses cannot be dismissed. The risks to reptiles and terrestrial phase amphibians are assessed by using birds as a surrogate, so risks to reptiles are assumed to be the same as those to birds. No acute or chronic mammal assessments were conducted because data were not submitted to the Agency. Consequently, OPP is not able to dismiss the risk for this group.

To adequately protect human health and the environment, it may be necessary to change current use and/or application practices. The Agency is requesting the public's input on usage information, data refinement, and/or mitigation proposals to address risk concerns resulting from the uses of chloroneb. Specific areas in which the Agency is requesting public input are provided in a separate document available in the chloroneb docket.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for chloroneb. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. In particular, the Agency is seeking any available toxicity data on chloroneb relating to cancer. Without such data, the Agency believes a safety finding can not be made, nor a decision to find chloroneb eligible for reregistration. Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to chloroneb, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For chloroneb, a modified, 4-Phase process, one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments, and limited use. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for chloroneb. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 19, 2005.

Robert C. Mc Nally,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–10576 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

Summary: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: June 8, 2005 at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting will include a report on the Africa panel at this year's U.S. Ex-Im Bank annual meeting; a briefing as to Em-Im Bank's involvement in the June 21–24 Corporate Council on Africa's Business Summit being held in Baltimore, MD; an update on the current year's business development efforts in the region; individual reports by the advisory committee's three sub-committees (Country Risk, Credit and Business Development) followed by discussion focusing on the advisory committee's recommendations in accordance with the Congressional mandate; and new business.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person

wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 8, 2005, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Howard Schweitzer,

Deputy General Counsel

[FR Doc. 05–10485 Filed 5–25–05; 8:45 am]

BILLING CODE 6690–01–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 website at *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 20, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Park Avenue Bancorp, Inc., New York, New York; to become a bank holding company by acquiring 80.1 percent of the voting shares of The Park Avenue Bank, New York, New York.

Board of Governors of the Federal Reserve System, May 20, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–10516 Filed 5–25–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[FTR 2005–N2]

Office of Governmentwide Policy

Governmentwide Relocation Advisory Board, Public Meetings-2005

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing five additional public meetings of the Governmentwide Relocation Advisory Board (Board) for 2005. The Board is examining a wide range of management issues related to relocation polices. Its first priority is to review the current policies promulgated through the Federal Travel Regulation (FTR) for relocation allowances and associated reimbursements. The next five Board meetings and conference calls scheduled for 2005 will be:

June 21, 2005

Location: General Services Administration, Auditorium, 1800 F Street NW., Washington DC 20405

Time: 9:00 a.m. to 4:00 p.m. (eastern daylight time)

Teleconference: A public-accessible teleconference line is available for the entire meeting the number is (888) 551-7093 the participant pass code is 613820

June 22, 2005

Location: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008

Time: 9:00 a.m. to 4:00 p.m. (eastern daylight time)

Teleconference: A public-accessible teleconference line is available for the entire meeting the number is (888) 551-7093 the participant pass code is 613820

June 23, 2005

Location: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008

Time: 9:00 a.m. to 4:00 p.m. (eastern daylight time)

Teleconference: A public-accessible teleconference line is available for the entire meeting the number is (888) 551-7093 the participant pass code is 613820

July 20, 2005

Location: Conference Call

Time: 9:00 a.m. to 11:00 a.m. (eastern daylight time)

Teleconference: A public-accessible teleconference line number is (888) 551-7093 the participant pass code is 613820

August 17, 2005

Location: Conference Call

Time: 9:00 a.m. to 11:00 a.m. (eastern daylight time)

Teleconference: A public-accessible teleconference line number is (888) 551-7093 the participant pass code is 613820

FOR FURTHER INFORMATION CONTACT: Patrick O'Grady, Designated Federal Officer (DFO), General Services Administration, 1800 F Street NW., Room 1221, Washington, DC 20405, via phone at (202) 208-4493; email at *patrick.ogrady@gsa.gov*, fax at (202) 208-1398, for further information on submitting written or brief oral comments that is not mentioned below. General information concerning the Board can be obtained on the GSA Web site: *www.gsa.gov/travelpolicy*.

Providing Oral or Written Comments at Board Meetings: GSA will accept written comments of any length, and accommodate oral public comments whenever possible. Public comments may be made at either the June 21, 22 or 23 meetings. GSA expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation will be limited to a total time of ten minutes (unless otherwise indicated). Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Mr. O'Grady no later than noon eastern daylight time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the Board and the public at the meeting.

Written Comments: Although the GSA accepts written comments until the date of the meeting, Mr. O'Grady should receive written comments no later than noon eastern daylight time five business days prior to the meeting so that the comments may be provided to the Board for their consideration prior to the meeting. Comments should be provided to Mr. O'Grady at the previously noted address, as follows: one hard copy with

originalsignature, and one electronic copy via e-mail in a Word, WordPerfect, or Adobe Acrobat PDF file. Those providing written comments are also asked to bring 75 copies of the comments to the meeting.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the public meetings for the GSA Governmentwide Relocation Advisory Board. The Administrator of General Services has determined that the establishment of the Board is necessary and in the public interest.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference rooms, should contact the DFO at the phone number or e-mail address noted above at least 10 days prior to the meeting so that appropriate arrangements can be made.

Dated: May 16, 2005.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 05–10501 Filed 5–25–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authority vested in the Secretary of Health and Human Services under Title III, Section 317R, of the Public Health Service Act (42 U.S.C. 247b–20), titled "Food Safety Grants," as amended, which is to award grants to States and Indian tribes (as defined in section 4(c) of the Indian Self-Determination, and Education Assistance Act (25 U.S.C. 450b(e))), to expand participation in networks to enhance Federal, State, and local food safety efforts, including meeting the costs of establishing and maintaining the food safety surveillance, technical, and laboratory capacity needed for such participation.

Limitation: this authority must be implemented with prior consultation of the Office of Public Health Emergency Preparedness, Office of the Secretary.

This delegation shall be exercised under the Department's existing policies on delegations of authority and issuance of regulations. This delegation becomes effective upon date of signature. In addition, I have ratified an affirmed any actions taken by the Commissioner or his or her subordinates which involved the exercise of the authorities delegated herein prior to he effective date of the delegation.

Dated: May 18, 2005.

Michael O. Leavitt,

Secretary

[FR Doc. 05–10572 Filed 5–25–05; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement Organization, Functions, and Delegation of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended as follows: "Chapter AJ, Office of the Assistant Secretary for Administration and Management," as last amended at 68 FR 36808–36812, dated June 19, 2003. This reorganization is to show that the Office of Small and Disadvantaged Business Utilization (AJGA), currently within the Office of Acquisition and Management Policy, Office of the Assistant Secretary for Administration and Management, now is responsible only to, and report directly to, the Deputy Secretary of the Department of Health and Human Services. The changes are as follows:

I. Under chapter AJ, Office of the Assistant Secretary for Administration and Management, Office of Acquisition Management and Policy (AJG), delete in its entirety, the "Office of Small and Disadvantaged Business Utilization (AJGA)."

II. Under Chapter AJ, establish the Office of Small and Disadvantaged Business Utilization (AJH):

Section AJH.00 Mission. The Office of Small and Disadvantaged Business Utilization (OSDBU) for the Department of Health and Human Services (HHS) fosters the use of small and disadvantaged business as Federal contractors pursuant to Pub. L. 95–507. Manages the development and implementation of appropriate outreach programs aimed at heightening the awareness of small business community to the contracting opportunities available within HHS. Issues policy and guidance on all small business programs for HHS.

Section AJH.10 Organization. The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible to and reports directly to the Deputy Secretary, who reports to the Secretary. The OSDBU is headed by a Director, who is responsible only to, and report directly to, the Deputy Secretary.

Section AJH.20 Functions. A. The Office of Small and Disadvantaged Business Utilization (OSDBU) provides leadership, policy, guidance and supervision, as well as coordinating short and long range strategic planning for the Secretary and the Deputy Secretary to aid small business vendors in doing business with the Department.

B. Has responsibility within the Department for policy, plans, and oversight to execute the functions the functions under Section 8 & 15 of the Small Business Act.

C. Provides leadership to the development and assessment of the Department's programs and policies to develop and consolidate a unified small business voice in support of the "One Department" initiative.

D. Supports the acquisition and program offices of HHS to ensure compliance with the Small Business Act, the Federal Acquisition Regulations (FAR) and the HHS Acquisition Regulations (HHSAR).

E. Prepares documentation and reports to the Executive Office of the President, the Congress, Office of Management and Budget, the Small Business Administration, and other agencies as required.

F. Provides input for coordinated Department positions on proposed legislation and Government regulations on matters affecting cognizant socioeconomic programs and maintains liaison with Congress through established Department channels.

G. Oversees and monitors the Departmental review and screening of planned procurement by programs and procurement offices to ensure that preference programs are given through consideration throughout the decision making process.

I. Builds strong relationships with internal, as well as, external customers and partners of HHS.

Dated: May 18, 2005.

Evelyn White,

Acting, Assistant Secretary for Administration and Management.

[FR Doc. 05–10571 Filed 5–25–05; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the Citizens' Health Care Working Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS

ACTION: Notice of public meeting

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting and hearing of the Citizens' Health Care Working Group mandated by section 1014 of the Medicare Modernization Act.

DATES: The meeting will be held on Tuesday, June 7, 2005 from 1 p.m. to 5 p.m. The hearing will be held Wednesday, June 8, 2005 from 8 a.m. to 12 noon.

ADDRESSES: The meeting and hearing will both be held at the Jackson Medical Mall, 350 West Woodrow Wilson Drive, Jackson, Mississippi 39213. The meeting and hearing are open to the public.

FOR FURTHER INFORMATION CONTACT: Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *ctaplin@ahrq.gov*. If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda and roster is available on the Citizens' Group Web site. *http://www.citizenshealth.ghrq.gov*. When a transcription of the Group's June 7 and 8 meeting and hearing are completed, they are available on the Web site.

SUPPLEMENTARY INFORMATION: Section 1014 of Pub. L. 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified in 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and (3) submit their recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: The Secretary of DHHS is designated as a member by the statute and the Comptroller General of the U.S. Government Accountability Office (GAO) is directed to appoint the remaining 14 members. The Comptroller General announced the 14 appointments on February 28, 2005. A list of the Working group members is available on the GAO Web site (*http://www.gao.gov*).

Agenda

The meeting on June 7 will be devoted to ongoing Working Group business. The hearing on the morning of June 8 will be devoted to three broad topics: Access; the reality of being uninsured; and State, local, and private initiatives.

The business meeting on June 7 will address topics such as: Discussions of future additional hearings, the required Report to the American People, and continuing discussion regarding approaches for conducting the community meetings required by the statute.

Submission of Written Information

Individuals or organizations wishing to provide written information for consideration by the Citizen Group should submit information electronically to *citizenshealth@ahrq.hhs.gov*. Targeted but separate submissions that address the following topics are encouraged: (1) The above-listed issues that will be addressed at the June meeting; (2) the issues that the statute requires the Report to the American People to address which can be found at the Citizen Group Web site; and (3) examples of innovative public or private sector initiatives to address the issues that the statute requires the hearings or Report to address. If an individual or organization wishes to address more than one of these topics, separate submissions are requested. Because all electronic submissions will be posted on the Working Group Web site, separate submissions will facilitate review of ideas submitted on each topic by the Working Group and the public.

Dated: May 24, 2005

Carolyn M. Clancy,

Director.

[FR Doc. 05–10651 Filed 5–24–05; 1:13 pm]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and quality

Correction to a Notice of Meetings

With this Notice, AHRQ is publishing a correction to the following "Study Section" meetings published in the **Federal Register** on May 9, 2005, Volume 70, Number 88, Pages 24426–24427, see also *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edock.access.gop.gov/2005/05–9182.htm*, reflect correct dates:

- Name of Subcommittee: Health Systems Research

  Date: June 17, 2005.

- Name of Subcommittee: Health Care Quality and Effectiveness Research

  Date: June 23, 2005.

Dated: May 12, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–10474 Filed 5–25–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application (RFA) AA032]

Duchene and Becker Muscular Dystrophy Education and Outreach Initiative; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Purpose of the program is to begin a coordinated education and outreach initiative on Duchenne and Becker Muscular Dystrophy (DMBD). This program addresses the "Healthy People 2010" focus area 6: Promote the health of people with disabilities, prevent secondary conditions, and eliminate disparities between people with and without disabilities in the U.S. population.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Assistance will be provided only to Parent Project Muscular Dystrophy, Middletown, Ohio. No other applications are solicited. H.R. Conf. Rep. No. 108–792, Division F, Title II, Department of Health and Human Services, Center for Disease Control and Prevention (2005) specified funds to this organization.

C. Funding

Approximately $500,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to 12 months. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For technical questions about this program, contact: Michael A. Brown Project Officer, Centers for Disease Control and Prevention (CDC), National Center on Birth Defects and Developmental Disabilities, Division of Human Development and Disability, 1600 Clifton Road, NE., Mailstop E–88, Atlanta, GA 30333, Telephone: 404–498–3006, E-mail: *MABrown@cdc.gov.*

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10540 Filed 5–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Coordination of Activities Between the CDC's National Immunization Program and the State and Territorial Health Officials

Announcement Type: New.

Funding Opportunity Number: RFA AA005.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 27, 2005.

Application Deadline: July 25, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under 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.

Purpose: The purpose of the program is to coordinate the activities between the National Immunization Program (NIP) and the state and territorial health officials on issues related to immunizations for children, adolescent and adults. Specifically: (1) To allow exchange of information between the state and territorial health officials and NIP, (2) to inform state and territorial health officials of current, proposed and new legislation regarding immunization, (3) to create mechanisms to communicate and inform state and territorial health officials and partners about timely and new immunization initiatives and the progress of current immunization programs, (4) to encourage states to participate in federal and state immunization initiatives, and (5) to create partnerships between State health departments and other immunization related stakeholders, and to educate health officials, providers and the public on the importance of timely vaccination. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Disease.

Measurable outcomes of the program will be in alignment with the following performance goals for NIP:

- Reduce the number of indigenous cases of vaccine preventable diseases,
- Ensure that two year-olds are appropriately vaccinated, and
- Increase the proportion of adults who are vaccinated annually against influenza and ever vaccinated against pneumococcal disease.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: Awardee activities for this program are as follows:

1. Coordinate immunization efforts with existing state and territorial health officials' health projects, Special Supplemental Nutrition Program for Women, Infants and Children (WIC) program, the Council of State and Territorial Epidemiologists (CSTE), the Association of Immunization Managers (AIM), the National Association of County and City Health Officials (NACCHO) and other organized health related associations where immunization programs can have an impact on increasing vaccination coverage.

2. Attend meetings and inform state and territorial health officials and other partners of issues addressed by the Advisory Committee on Immunization Practices (ACIP), the National Vaccine Advisory Committee (NVAC) and the immunization-related committees of the Association of State and Territorial Health Officials, NACCHO and AIM.

3. Provide information on key immunization-related developments and legislative issues to state and territorial health officials, state immunization coordinators, appropriate adult or adolescent groups, and other partners via newsletters, conference calls, and other multimedia sources.

4. Organize and convene meetings and workshops on an as needed basis for the purpose of exchanging immunization related information and program updates. Provide representation of state and territorial health officials at national meetings.

5. Collaborate with CDC on immunization-related issues including vaccine supply, vaccine financing, implementation of new vaccines, pandemic preparedness, adolescent and adult immunization and the development and coordination of immunization national policy and evaluation.

In a cooperative agreement, CDC staff are substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

1. Provide technical assistance in implementing activities, identifying major immunization-related issues, identifying effective programs, and setting priorities related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the awardees' activities, including information on disease impact, vaccination coverage levels, vaccine supply and prevention strategies.

3. Assist in development and review of relevant immunization information made available to federal, State and local health agencies, health care providers and volunteer organizations.

4. In conjunction with the grantee, establish and implement mechanisms for evaluating the reach of the program and effectiveness of the materials produced.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $250,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 1.

Approximate Average Award: $250,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs)

Floor of Award Range: None.

Ceiling of Award Range: $ 250,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.
Project Period Length: 5 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 or private national nonprofit organizations and by governments and their agencies that officially represent the chief public health officials of each state and territory and have the knowledge and understanding of the needs and operations of state health agencies, especially regarding immunization-related programs and services.

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.

Justification of Limitation: Assistance will be provided to one applicant that can demonstrate the ability to accomplish the objectives stated above (See section I purpose). Applicant should be able to demonstrate ability to provide support to the state and territorial health officials on immunization-related issues and have knowledge of immunization policy, experience in supporting immunization programs, and ability to collaborate on immunization activities. The applicant should officially represent chief health officials from all states and territories.

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 special 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.
- Applications may be submitted by public or private national nonprofit organizations and by governments and their agencies that officially represent the chief public health officials of each state and territory and have the knowledge and understanding of the needs and operations of state health agencies, especially regarding immunization-related programs and services.

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.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

To submit your application electronically, please utilize the forms and instructions posted for this announcement at *http://www.grants.gov.*

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 Submission

Letter of Intent: A Letter of Intent (LOI) is optional for this program. The RFA title and number must appear in the LOI. Your letter of intent will not be evaluated, but will be used to assist CDC in planning for the objective review for this program.

Your LOI must be written in the following format:

- Maximum number of pages: 2
- Font size: 12-point unreduced
- Paragraph spacing: Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printing: Only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- The name of the organization
- The primary contact person's name, mailing address, phone number, fax and e-mail address
- The mission/activities of the organization
- A description of the organization's membership, including the number of members in the organization.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Paragraph spacing: Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printing: only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Background

- Provide a narrative, including background information on the applicant organization that includes evidence of relevant experience in coordinating activities among constituents and a clear understanding of the purpose of the project.
- Include details of past experience working with the target population(s). Provide information on organizational capability to conduct proposed project activities.

2. Program Management

- Describe the professional personnel involved in the management of this project and their qualifications.
- Provide evidence of an organizational structure that can meet the terms of the project. Include an organizational chart of the applicant organization specifying the location and staffing plan for the proposed project.

3. Objectives

- Establish long-term (5 years) and short-term (one-year) objectives that are specific, realistic, measurable and time-phased. Include an explanation of how the objectives contribute to the purpose of the request for assistance and evidence that demonstrates the potential effectiveness of the proposed objectives.

4. Methods of Operation

- Describe the operational plan for achieving each objective established. Concisely describe each component or major activity and how it will be carried out.
- Include a time-line for completing each component or major activity.

• Provide a plan for disseminating project results indicating when, to whom, and in what format the materials will be presented.

5. Evaluation Plan

• Describe the plan for monitoring progress toward achievement of each of the objectives.

6. Collaboration Activities

• Obtain and include letters of support, written in the last 12 to 24 months from constituents.

• Provide any memoranda of agreement from collaborating organizations indicating a willingness to participate in the project, the nature of their participation, period of performance, names and titles of individuals who will be involved in the project, and the process of collaboration. Each memorandum should also show an understanding and endorsement of immunization activities.

• Provide evidence of collaborative efforts with health departments, provider organizations, coalitions, and other local organizations.

7. Budget Information

• Provide a detailed budget with justification. The budget proposal should be consistent with the purpose and program plan of the proposed project.

• Provide an itemized (line-item) budget categorized by objective.

The budget proposal should be in the application appendices. The appendices will not be counted toward the narrative page limit.

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. 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*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

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 27, 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: July 25, 2005.

Explanation of Deadlines: 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 submission 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.

If you submit your application electronically, you will receive an e-mail notice of receipt.

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, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline to 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 may not be used for research.

• Reimbursement of pre-award costs is not allowed.

• Construction, renovations, purchase or lease of passenger vehicles or vans, or supplementing any applicant expenditure are 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.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Nicole Smith, Centers for Disease Control and Prevention, National Immunization Program, 1600 Clifton Road, NE., MS E–52, Atlanta, GA 30333. (404) 639–6220 (phone). (404) 639–8627 (fax). *nsmith2@cdc.gov* (E-mail address).

Application Submission Address: You may submit your application electronically at: *http://www.grants.gov*, OR submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA AA005, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

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.

Your application will be evaluated against the following criteria:

1. Experience (15 Points)

Does the applicant document having experience in representing chief health officials from each of the states and territories and actively engaging them in issues and policies related to immunization? Does the applicant have the ability to communicate with their constituents on timely issues?

2. Collaboration (15 Points)

Does the applicant's organization include representatives from each of the states and territories from all parts of the nation? Has the applicant worked with state and territorial health officials, as well as partner organizations on immunization issues?

3. Understanding the project (15 Points)

Does the applicant understand the requirements, problems, objectives, complexities, and interactions required of this project?

4. Objectives (15 Points)

Are the proposed objectives clearly stated, realistic, time phased and related to the purpose of this project?

5. Operational Plan and Timetable (15 Points)

Are the applicant's plans to carry out the proposed activities feasible and consistent with the stated objectives in this proposal? Does the timetable incorporate major activities and milestones that are specific, measurable and realistic? Does the plan include dates and persons responsible for accomplishing tasks?

6. Staff Capacity (15 Points)

Do the professional personnel proposed to be involved in administering this project and the professional personnel proposed to provide program leadership have the capacity to perform the work proposed? Do the staff have qualifications with evidence of past achievements?

7. Evaluation Plan (10 Points)

Does the evaluation plan appear feasible for monitoring progress toward meeting the stated project objectives? In addition to evaluating outcomes-related project objectives, does the plan clearly describe how the grantee will use performance measures to track internal processes?

8. Budget (Not Scored)

Is the budget reasonable, clearly justified, and consistent with the intended use of funds?

9. GPRA Goals (Not Scored)

Will the application further NIP's GPRA goals stated in section "I. Purpose" of this announcement?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Immunization Program. 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.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

Applications will be funded in order by score and rank determined by the review panel.

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–7 Executive Order 12372
- 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–20 Conference Support
- 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 Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 120 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report and annual progress 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 program technical assistance, contact: Nicole Smith, Project Officer, CDC National Immunization Program, 1600 Clifton Road, MS E–52, Atlanta, GA 30333. Telephone: (404) 639–6220. E-mail: *nsmith2@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: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Information about the National Immunization Program can be found at *http://www.cdc.gov/nip.*

Dated: May 20, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10538 Filed 5–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Emergency Preparedness

Announcement Type: New.

Funding Opportunity Number: AA154.

Catalog of Federal Domestic Assistance Number: 93.283.

Application Deadline: July 13, 2005.

Notice of Award: August 31, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under 42 U.S.C. 247d–3.

Purpose: The purpose of this program is to upgrade and integrate State and local public health jurisdictions' preparedness for and response to terrorism and other public health emergencies with Federal, State, local, and tribal governments, the private sector, and Non-Governmental Organizations (NGOs). These emergency preparedness and response efforts are intended to support the National Response Plan (NRP)[1] and the National Incident Management System (NIMS)[2].

In addition, the activities described in this cooperative agreement guidance are designed to develop emergency-ready public health departments in accord with the Interim National Preparedness Goal (NPG)[3], the Interim Public Health and Healthcare Supplement to the NPG[4], and the Centers for Disease Control and Prevention (CDC) Preparedness Goals (see below). Associated with the Interim NPG are two broad-gauged resources to help guide preparedness planning and implementation: A set of scenarios and the Target Capabilities List[5]. The Department of Homeland Security (DHS) developed the Interim NPG and the associated resources in concert with the Department of Health and Human Services and other agencies of the Federal Government as well as with representatives of State and local public health departments and other stakeholders. All of these documents will be refined and extended from time to time to capture lessons learned and to introduce new concepts as appropriate.

This announcement is only for non-research activities supported by the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR). If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/opspoll1.htm.*

This program addresses the "Healthy People 2010" focus area(s) of public health infrastructure.

Recipient Activities: CDC has developed Preparedness Goals designed to measure urgent public health system response performance parameters that are directly linked to health protection of the public. The Preparedness Goals are intended to measure urgent public health system response performance for terrorism and non-terrorism events including infectious disease, environmental and occupational related emergencies. For the purposes of this announcement urgent response is intended to indicate non-routine public health system reaction to limit possible mortality, morbidity, loss of quality of life, or economic damage. The primary intent of this cooperative agreement is to fund the active participation of awardees in the immediate establishment, use, and continuous improvement of a national system using the CDC Preparedness Goals to measure public health system response performance. The CDC Preparedness Goals are below:

Prevent: (1) Increase the use and development of interventions known to prevent human illness from chemical, biological, radiological agents, and naturally occurring health threats.

(2) Decrease the time needed to classify health events as terrorism or naturally occurring in partnership with other agencies.

Detect/ Report: (3) Decrease the time needed to detect and report chemical, biological, radiological agents in tissue, food or environmental samples that cause threats to the public's health.

(4) Improve the timeliness and accuracy of information regarding threats to the public's health as reported by clinicians and through electronic early event detection, in real time, to those who need to know.

Investigate: (5) Decrease the time to identify causes, risk factors, and appropriate interventions for those affected by threats to the public's health.

Control: (6) Decrease the time needed to provide countermeasures and health guidance to those affected by threats to the public's health.

Recover: (7) Decrease the time needed to restore health services and environmental safety to pre-event levels. (8) Increase the long-term follow-up provided to those affected by threats to the public's health.

Improve: (9) Decrease the time needed to implement recommendations from after-action reports following threats to the public's health.

The activities in this cooperative agreement guidance will be based on the synchronization of the Department of Homeland Security Target Capabilities List (TCL) with the CDC Preparedness Goals in order to create a preparedness framework that identifies the key needs for the public health community.

The TCL was developed under the auspices of Homeland Security Presidential Directive 8: National Preparedness (HSPD–8). It is a functional, performance-focused compendium of response activities designed to provide State and local jurisdictions with nationally accepted preparedness levels of first responder capabilities. The TCL was developed in close consultation with Federal, State, local, and tribal entities and national associations, including CDC and many of the agency's key response partners.

Additional Requirements: The activities outlined in the guidance and required for the application for funds are as follows:

1. The existence of or current efforts to establish or participate in a senior advisory committee during Fiscal Year 2005 (FY05) to coordinate funding with the U.S. Department of Health and Human Services' (HHS) Centers for Disease Control and Prevention; U.S. Department of Health and Human Services' (HHS) Health Resource and Services Administration (HRSA) hospital preparedness cooperative agreement; and FY05 Homeland Security Grant Program Department of

[1] Emergency Support Function Annexes. National Response Plan. Available at: *http://www.dhs.gov/dhspublic/interapp.editorial/editorial_0566.xml.*

[2] National Incident Management System *http://www.fema.gov/nims/.*

[3] Interim National Preparedness Goal: *http://www.ojp.usdoj.gov/odp/docs/InterimNationalPreparednessGoal_03–31–05_1.pdf.*

[4] Interim Public Health and Healthcare Supplement to the National Preparedness Goal: *http://www.hhs.gov/ophep/index.html.*

[5] Target Capabilities List: Version 1.0; January 31, 2005. U.S. Department of Homeland Security Office of State and Local Government Coordination and Preparedness (ATTN: Office for Policy, Initiatives, and Analysis) 810 7th Street, NW. Washington, DC 20531. Version 1.0 of the Target Capabilities List will be made available on the ODP Secure Portal (*https://odp.esportals.com*) and the Lessons Learned and Information Sharing network (*http://www.llis.gov*).

Homeland Security, Office for Domestic Preparedness.

2. During the award year, awardees ability to respond to events will be evaluated through assessments, site visits, drills, exercises, and responses to real events. In year one of this cooperative agreement, CDC will initiate a series of drills to test components of a comprehensive response system. In years 2–5 of this cooperative agreement, CDC will require the demonstration of a broader set of measures that are consistent with the TCLs through full-scale exercises at the State and local level. Further guidance on the development and evaluation of exercises and drills will be forthcoming from CDC. To the extent possible, public health exercises should use standards set by the DHS Homeland Security Exercise Evaluation Program (HSEEP) as well as other recognized exercise programs including those used by the Federal Emergency Management Agency (FEMA) Emergency Management Institute. These exercises should test both horizontal and vertical integration with response partners at the local, tribal, State, and federal level.

3. Awardees must ensure that funds are available to establish and maintain systems to collect and report on the performance measures described in this program announcement, including reporting on the achievement of performance measures by local public health entities.

4. Awardees are expected to address the activities and outcomes described in this announcement through the use of cooperative agreement funds and coordination with other funding sources such as the Urban Areas Security Initiative (UASI) and the Metropolitan Medical Response System (MMRS) through the Department of Homeland Security. Achievement of these outcomes will be evaluated through drills, exercises, and responses to real events whenever possible.

5. While this guidance contains instructions for CDC awardees, it also includes recipient activities that need to be integrated with those funded by the hospital preparedness cooperative agreement administered by HRSA. Further, CDC encourages applicants to coordinate activities with current relevant efforts in their jurisdictions or proposed under the various goals of this cooperative agreement.

Applicants should also coordinate activities within their jurisdictions (*i.e.*, at the State level), between State and local jurisdictions, tribes, and military installations; among local agencies; and with hospitals and major health care entities, including tribal and Public Health Service health facilities; among jurisdictional MMRSs, and adjacent States. If applicable, awardees should coordinate with neighboring provinces, tribal/First Nations indigenous jurisdictions and States across international borders.

6. Public health agencies must support public health response functions in the context of NIMS. In accordance with HSPD–5, NIMS provides a consistent approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. As a condition of receiving Public Health Emergency Preparedness cooperative agreement funds, awardees agree to adopt and implement NIMS. In accordance with the eligibility and allowable uses of the cooperative agreement, awardees are encouraged to direct FY05 funding towards activities necessary to implement NIMS.

On September 8, 2004, the former Secretary of Homeland Security, Tom Ridge, wrote a letter to the Governors outlining the important steps that State, territorial, tribal and local entities should take during FY05 to become compliant with NIMS.[6]

In order to receive Fiscal Year 2006 (FY06) preparedness funding, the minimum FY05 compliance requirements described in the Secretary's letter must be met. Applicants will be required to certify as part of their FY06 cooperative agreement applications that they have met the FY05 NIMS requirements.

NIMS compliance activities to be accomplished during FY05 are as follows:

States and Territories

- Incorporate NIMS into existing training programs and exercises;
- Ensure that federal preparedness funding (including the National Bioterrorism Hospital Preparedness cooperative agreement) supports State, local and tribal NIMS implementation;
- Incorporate NIMS into Emergency Operations Plans (EOP);
- Promote intraState mutual aid agreements;
- Coordinate and provide NIMS technical assistance to local and tribal entities; and
- Incorporate Incident Command Systems (ICS) into public health department, hospital, and supporting health care systems.

State, Territorial, Local and Tribal Jurisdictions

- Complete the NIMS Awareness Course: "National Incident Management System (NIMS), An Introduction" IS 700.

This independent study course developed by the Emergency Management Institute (EMI) explains the purpose, principles, key components and benefits of NIMS. The course is available on the EMI Web page at: *http://training.fema.gov/EMIWeb/IS/is700.asp.*

- Formally recognize the NIMS and adopt NIMS principles and policies.

States, territories, tribes and local entities should establish legislation, executive orders, resolutions, or ordinances to formally adopt the NIMS. Go to *http://www.fema.gov/nims* and see NIMS Resources for examples.

- Determine which NIMS requirements have already been met.

State, territorial, tribal, and local entities have already implemented many of the concepts and protocols identified in the NIMS. However, as gaps in compliance with the NIMS are identified, States, territories, tribes and local entities should use existing awards to develop strategies for addressing those gaps.

- Develop a strategy and timeframe for full NIMS implementation.

States, territories, tribes, and local entities are encouraged to achieve full NIMS implementation during FY05. To the extent that full implementation is not possible during FY05, federal preparedness assistance must be leveraged to complete NIMS implementation by FY06. By Fiscal Year 2007 (FY07), federal preparedness assistance will be conditioned by full compliance with the NIMS. States should work with tribal and local governments to develop a strategy for Statewide compliance with the NIMS.

- Incorporate Incident Command Systems (ICS) into public health department, hospital, and supporting health care systems.

All Federal, State, territory, tribal and local jurisdictions are required to adopt ICS in order to be compliant with the NIMS. See NIMS and the Incident Command System at *http://www.fema.gov/nims* under NIMS Resources.

During the FY 2005 budget period the Department of Health and Human Services will continue to work closely with the NIMS Integration Center to clarify NIMS requirements for public health and medical communities. Both HRSA and CDC will continue to provide technical assistance throughout this

[6] Available at *http://www.fema.gov/doc/nims/letter_to_governors_09082004.doc*, accessed April 7, 2005.

process to assist to awardees in meeting 2005 requirements.

7. Competency-based education of public health workers, clinicians, and others critical to emergency response should be planned and implemented based on needs identified through assessments and/or evaluations of performance. Awardees are expected to continue to support preparedness education and training activities needed to successfully achieve targeted outcomes and preparedness goals. Development, delivery, and evaluation of competency-based preparedness education should be done in conjunction with Centers for Public Health Preparedness (CPHP), and academic experts in other schools of public health, medicine, nursing, and academic health science centers.

Prior to planning development of new preparedness education courses or training programs to meet identified needs, efforts should be taken to identify and utilize existing education programs that have been evaluated for learning effectiveness (*e.g.* as evidenced by measured knowledge gained through pre- and post-tests, self-assessed learner competence, and/or skill demonstrations.) Resources such as learning management systems ((*e.g.* TrainingFinder Real-time Affiliate Integrated Network (TRAIN)) and other preparedness educational inventories ((*e.g.* Centers for Public Health Preparedness (CPHP) Resource Center)) can help facilitate the identification of existing preparedness educational programs that can be accessed, adopted, and adapted for local use, which will result in less duplication and more efficient use of available funds.

8. During the award year, awardees are expected to implement capable, interoperable information systems that support public health preparedness. PHIN Preparedness defines functional requirements in the areas of Early Event Detection, Outbreak Management, Countermeasure and Response Administration, Partner Communications and Alerting, and Connecting Laboratory Systems. All awardees are expected to develop information technology systems that are compliant with PHIN and begin to initiate the PHIN Preparedness certification process (further guidance on this process can be found at *http://www.cdc.gov/phin/certification*) during this cooperative agreement cycle. PHIN certification will ensure that systems have the capabilities necessary ("functional requirements") to share data and work together ("Key Performance Measures—KPM's") in order to implement a national network of capable public health preparedness systems. Certification is based upon the system requirements and specification guides found at *http://www.cdc.gov/phin*. Self-assessment tools are available for all functional areas and the alerting KPMs at *http://www.cdc.gov/phin/certification*.

Awardees may choose to meet the system requirements and specifications by: building or enhancing their own systems, purchasing commercial solutions, or using CDC developed systems and services. The requirements documents and specification guides include the details of what needs to be implemented in grantee systems to meet these needs. Some awardees may choose to use CDC developed software and services either as their final solutions or as bridge solutions until their own systems meet the requirements and specifications and are certified. The CDC has software and services available to cover all of the PHIN Preparedness functional areas, but the CDC is committed to working with awardees to help support solutions from any viable software solutions providers. The implementation of the PHIN Preparedness functional requirements will usually require several software systems to cover all of the functional areas, but in some circumstances, awardees may implement a single system that covers more than one functional area. Each PHIN Preparedness functional area can be certified separately. While CDC systems will undergo certification themselves, if CDC software and services are used in the awardee environment some components will require certification in the environment they are implemented.

9. CDC requires documentation with the cooperative agreement application that describes the process used by the State health department to engage local health departments to reach consensus, approval, or concurrence for the proposed use of non-earmarked cooperative agreement funds. Non-earmarked cooperative agreement funds are those funds not designated for urban areas (*e.g.* Cities Readiness Initiative (CRI)), Early Warning Infectious Disease Surveillance (EWIDS), currently established Level 1 Chemical laboratories, or other specialty activities as defined in the guidance. The description should bear evidence that local health department officials have been engaged in the cooperative agreement application process and at least a majority, if not the total, approves or concur with the application itself. This evidence may be demonstrated by:

a. The consensus of a majority of local health officials whose collective jurisdictions encompass a majority of the State's population;

b. The recommendation of the President of the State Association of County and City Health Officials (SACCHO) if a majority of local health officials whose collective jurisdictions encompass a majority of the State's population agree with the SACCHO's decision; or

c. Any other alternative method agreed to by the State Health Official and a majority of local health officials whose collective jurisdictions encompass a majority of the State's population.

State applicants will be required to submit a list of concurring local health departments and a brief description of the process used to engage local health departments to reach consensus, approval, or concurrence for the proposed use of funds. In addition, State applicants will be required to provide signed letters of concurrence upon request.

10. CDC requires documentation with the cooperative agreement application that describes the process used by the State health department to engage the following entities in preparedness and response activities: American Indian tribal governments, Tribal organizations representing those governments, tribal epidemiologic centers, or Alaska Native Villages and Corporations located within their boundaries.

11. State awardees are expected to ensure the preparedness of major population centers within each State either through the provision of funding to the population centers to ensure their capability to perform the outcomes and activities described and/or (for those States with a centralized public health system that does not fund local health agencies) by directly achieving the performance outcomes and completing the required activities described in this cooperative agreement announcement in those population centers. State awardees are expected to report on the relevant performance measures (see Appendix 4) for the following population centers. Some of the performance measures will be reported on by each local public health agency (through the State) in the jurisdiction; others will require the local agencies to work collaboratively to develop an integrated response. In those cases, reporting will be done through the State for the region as a whole (see Appendix 4).

State	Biowatch* or UASI (05) cities	Associated MSA
Arizona	Phoenix	Phoenix-Mesa-Scottsdale, AZ
California	Anaheim	Los Angeles-Long Beach-Santa Ana, CA
	Long Beach	Los Angeles-Long Beach-Santa Ana, CA
	Los Angeles	Los Angeles-Long Beach-Santa Ana, CA
	Oakland	San Francisco-Oakland-Fremont, CA
	Sacramento	Sacramento Arden-Arcade Roseville, CA
	San Diego	San Diego-Carlsbad-San Marcos, CA
	San Francisco	San Francisco-Oakland-Fremont, CA
	San Jose	San Jose-Sunnyvale-Santa Clara, CA
	Santa Ana	Los Angeles-Long Beach-Santa Ana, CA
Colorado	Denver	Denver-Aurora, CO
Delaware	Philadelphia	Philadelphia-Camden-Wilmington, PA-NJ-DE
District of Columbia	Washington/NCR	Washington-Arlington-Alexandria, DC-VA-MD
Florida	Jacksonville	Jacksonville, FL
	Miami	Miami-Fort Lauderdale-Miami Beach, FL
	Tampa	Tampa-St. Petersburg-Clearwater, FL
Georgia	Atlanta	Atlanta-Sandy Springs-Marietta, GA
Hawaii	Honolulu	Honolulu, HI
Illinois	Chicago	Chicago-Naperville-Joliet, IL-IN-WI
	St. Louis	St. Louis, MO-IL
Indiana	Indianapolis	Indianapolis, IN
	Chicago	Chicago-Naperville-Joliet, IL-IN-WI
	Cincinnati	Cincinnati-Middletown, OH-KY-IN
	Louisville	Louisville, KY-IN
Iowa	Omaha	Omaha-Council Bluffs, NE-IA
Kansas	Kansas City	Kansas City, MO-KS
Kentucky	Louisville	Louisville, KY-IN
	Cincinnati	Cincinnati-Middletown, OH-KY-IN
Louisiana	Baton Rouge	Baton Rouge, LA
	New Orleans	New Orleans-Metairie-Kenner, LA
Massachusetts	Boston	Boston-Cambridge-Quincy, MA-NH
Maryland	Baltimore	Baltimore-Towson, MD
	Washington DC	Washington-Arlington-Alexandria, DC-VA-MD
Michigan	Detroit	Detroit-Warren-Livonia, MI
Minnesota	Minneapolis	Minneapolis-St. Paul-Bloomington, MN-WI
Missouri	Kansas City	Kansas City, MO-KS
	St. Louis	St. Louis, MO-IL
Nebraska	Omaha	Omaha-Council Bluffs, NE-IA
North Carolina	Charlotte	Charlotte-Gastonia-Concord, NC-SC
New Hampshire	Boston	Boston-Cambridge-Quincy, MA-NH
New Jersey	Jersey City	New York-Northern New Jersey-Long Island, NY-NJ-PA
	Newark	New York-Northern New Jersey-Long Island, NY-NJ-PA
	Philadelphia	Philadelphia-Camden-Wilmington, PA-NJ-DE
Nevada	Las Vegas	Las Vegas-Paradise, NV
New York	Buffalo	Buffalo-Niagara Falls, NY
	New York	New York-Northern New Jersey-Long Island, NY-NJ-PA
Ohio	Cincinnati	Cincinnati-Middletown, OH-KY-IN
	Cleveland	Cleveland-Elyria-Mentor, OH
	Columbus	Columbus, OH
	Toledo	Toledo, OH
Oklahoma	Oklahoma City	Oklahoma City, OK
Oregon	Portland	Portland-Vancouver-Beaverton, OR-WA
Pennsylvania	Philadelphia	Philadelphia-Camden-Wilmington, PA-NJ-DE
	Pittsburgh	Pittsburgh, PA
	New York	New York-Northern New Jersey-Long Island, NY-NJ-PA
South Carolina	Charlotte	Charlotte-Gastonia-Concord, NC-SC
Texas	Austin*	Austin-Round Rock, TX
	Arlington	Dallas-Fort Worth-Arlington, TX
	Dallas	Dallas-Fort Worth-Arlington, TX
	Fort Worth	Dallas-Fort Worth-Arlington, TX
	El Paso*	El Paso, TX
	Houston	Houston-Baytown-Sugar Land, TX
	San Antonio	San Antonio, TX

State	Biowatch* or UASI (05) cities	Associated MSA
Virginia	Washington DC	Washington-Arlington-Alexandria, DC-VA-MD
Washington	Seattle	Seattle-Tacoma-Bellevue, WA
	Portland	Portland-Vancouver-Beaverton, OR-WA
Wisconsin	Chicago	Chicago-Naperville-Joliet, IL-IN-WI
	Milwaukee	Milwaukee-Waukesha-West Allis, WI
	Minneapolis	Minneapolis-St. Paul-Bloomington, MN-WI

*Biowatch only.

12. CDC will work with awardees and partner agencies ((including National Association of County and City Health Officials (NACCHO), Association of State and Territorial Health Officials (ASTHO), Council of State and Territorial Epidemiologists (CSTE), Association of Public Health Laboratories (APHL), DHS, and FEMA)) to build on these initial activities and develop performance-based metrics within the next six months that will measure all aspects of preparedness as outlined in the CDC Preparedness Goals and the TCLs. They will be developed with the understanding that wherever possible these activities can be demonstrated through performance in drills, exercises, or real events. Additional activities will include gap analysis, economic modeling, continuous improvement and data collection/evaluation from exercises and real events as well as piloting the developed metrics. Required critical tasks and performance measures will be updated in each project year as public health learns more about measuring preparedness. In addition, CDC will be developing targets for those measures that do not currently have them based on research over the coming year.

13. As Stated in the FY04 guidance, awardees should provide a copy of the complete pandemic influenza plan for the jurisdiction to HHS Office of Public Health Emergency Preparedness (OPHEP) via CDC Division of State and Local Readiness' Management Information System (DSLR–MIS). Awardees of this cooperative agreement should collaborate with influenza programs to maximize the impact of funds and efforts, reduce duplication, and coordinate activities including drills and exercises. Detailed information concerning the development of influenza pandemic preparedness plans is available in the document *Pandemic Influenza: A Planning Guide for State and Local Officials*, version 2.1 available at *http://www.hhs.gov/nvpo/pubs/pandemicflu.htm.*

Local Caches of Antiviral Drugs

Certain antiviral drugs are efficacious in countering influenza virus and could be the sole initial medical countermeasure against a pandemic strain until an effective vaccine is available. The H5N1 avian strain currently circulating widely in Asia has been shown to infect humans and cause significant mortality and morbidity; and the virus could trigger an influenza pandemic if it were to undergo genetic changes that enhance its transmissibility from person to person. One commonly available drug, Oseltamivir, has been shown to be effective against the current H5N1 strain. Because worldwide production capacity for antiviral drugs faces significant limitations, the Department of Health and Human Services is working to create a mechanism whereby it and its State and local public health partners might acquire and pre-deploy predictable quantities of antiviral drugs during the next several years.

The Hospital Bioterrorism Cooperative Agreement of the Health Resources and Services Administration (HRSA) includes a Critical Benchmark for hospital-based pharmaceutical caches. This provision provides a means for jurisdictions to amass appropriate quantities of antiviral drugs as a first line of protection for the staff of hospitals and other healthcare entities as well as their most critically ill patients. Such action could be one of the most important steps toward maintaining an effective healthcare infrastructure during an influenza pandemic.

Hospital-based pharmaceutical caches also could house antiviral drugs to protect public health professionals, another critical part of the human resources needed to combat an influenza pandemic. Funds allocated through the CDC bioterrorism cooperative agreement could be used to acquire appropriate quantities of antiviral drugs for storage within the hospital-based caches funded by the HRSA cooperative agreement. When and as needed, the drugs could be released to the public health department for it to dispense to its staff. This arrangement would be analogous to the way some jurisdictions have implemented the CHEMPAK program (containerized sets of nerve-agent antidotes)—*i.e.*, using CDC funds to acquire materiel, using HRSA funds to offset costs of storing it, and planning to release the materiel when and as needed to those authorized to use it in accord with an established Concept of Operations.

Awardees requesting to use cooperative agreement funds for the purchase of antiviral drugs for these caches must specify the quantity and cost as part of the budget application.

14. Awardees participating in the FY04 CRI will continue to do so in FY05 (the second year of the pilot initiative). The guidelines for CRI can be found in Appendix 3.

Application Content: What follows is the outline to be used to develop the application for funds. It was derived from a combination of many resources: past guidance, input from State and local public health partners, subject matter expertise within technical program areas of CDC, priorities from HHS, CDC priorities, documentation from DHS's TCL, DHS's Universal Task List (UTL), and HSPD–8.

The outline is arranged in the following manner:

CDC Goals—Draft CDC Preparedness Goals that form a framework for public health activities surrounding preparedness. This cooperative agreement is one activity among many that will contribute to meeting the Preparedness Goals.

Outcomes—The outcomes are Statements that were developed with State and local input from public health and homeland security. They were created in relation with HSPD–8 and are a comprehensive description of the major roles and capabilities needed to respond to an event of significance. Version 1 of the TCL contained 36 capabilities. For year one of this guidance, we singled out those capabilities that had a significant public health component. In some cases, we added language to the capabilities to

create a public health focused outcome. A comprehensive budget where each allocation is linked to an outcome should be submitted with the application through the DSLR MIS.

Required Critical Tasks—The critical tasks were obtained from the TCL. In most cases, the public health specific critical tasks associated with an outcome were listed. Language was added or modified to make the required critical task more specific to public health. In addition, program requirements specific to CDC and this cooperative agreement were added as sub-bullets under the required critical tasks to assure that each applicant addressed plans to continue implementation of the activities in the next cooperative agreement cycle.

Performance Measures—The performance measures are defined as leading indicators that will allow a national "snapshot" to show how the preparedness and response activities, and the associated resources, aid in making a public health system that responds more quickly and comprehensively in a public health emergency.

Applicants will be required to address each critical task (using the DSLR–MIS) by providing an explanation of their current capability to perform this task and proposing activities for this budget year to enhance performance on each critical task. In addition, applicants will be asked how they currently evaluate or plan to evaluate their ability to perform each of the critical tasks.

After award, CDC Project Officers and technical experts will monitor the progress of each awardee in accomplishing the activities set forth and approved in the plan submitted.

CDC Preparedness Goal 1: Prevent

Increase the use and development of interventions known to prevent human illness from chemical, biological, radiological agents, and naturally occurring health threats.

Outcome 1A: All Hazards Planning

Emergency response plans, policies, and procedures that identify, prioritize, and address all hazards (using the 15 National Planning Scenarios [7] [8] [9] [10] as a guide to identify or recognize the roles and responsibilities for each jurisdiction/agency) across all functions. All plans are coordinated at all levels of government and address the mitigation of secondary and cascading emergencies.

Required Critical Tasks: (1) Support incident response operations according to all-hazards plan

(2) Improve regional, jurisdictional, and State all-hazard plans (including those related to pandemic influenza) to support response operations in accordance with NIMS and the National Response Plan.[11]

(a) Increase participation in jurisdiction-wide self-assessment using the National Incident Management System Compliance Assessment Support Tool [12] (NIMCAST).

(b) Agency's Emergency Operations Center meets NIMS incident command structure requirements to perform core functions: coordination, communications, resource dispatch and tracking and information collection, analysis and dissemination.

(3) Increase the number of public health responders who are protected through Personal Protective Equipment (PPE), vaccination or prophylaxis

(a) Have or have access to a system that maintains and tracks vaccination or prophylaxis status of public health responders in compliance with Public Health Information Network (PHIN) Preparedness Functional Area Countermeasure and Response Administration [13]

(4) Increase and improve mutual aid agreements, as needed, to support NIMS-compliant public health response.

(5) Increase all-hazard incident management capability by conducting regional, jurisdictional and State training to:

(a) Include the Emergency Management Independent Study Program, IS 700, "National Incident Management System: An Introduction [14]" in the training plan for all staff expected to report for duty following activation of the public health emergency response plan and/or staff who have emergency response roles documented in their job descriptions.

(6) Provide support for continuity of public health operations at regional, State, tribal, local government, and agency level.

Measures: (1) Percent of public health employees who have emergency response roles documented in their job descriptions that are trained in Incident Management.

(2) Time to organize a NIMS-compliant medical and public health operations functional area [15] with hospitals that supports:

- incident epidemiological profiling
- pre-hospital care
- medical care
- mental health
- hazard threat/disease containment
- mass casualty care
- (Target: 3 hours from plan activation)

(3) Time from request for mutual aid to acknowledgement that request has been approved.

(4) Time to complete the notification/alerting of the initial wave of personnel to staff emergency operations (Target: 60 minutes).

(5) Time to have initial wave of personnel physically present to staff emergency operations (Target: 90 minutes from notification).

CDC Preparedness Goal 2: Prevent

Decrease the time needed to classify health events as terrorism or naturally occurring in partnership with other agencies.

Outcome 2A: Information Collection and Threat Recognition

Locally generated public health threat and other terrorism-related information is collected, identified, provided to appropriate analysis centers, and acted upon as appropriate.

Required Critical Tasks: (1) Increase the use of disease surveillance and early event detection systems.

(a) Select conditions that require immediate reporting to the public health agency (at a minimum, Category A agents).

(b) Develop and maintain systems to receive disease reports 24/7/365.

(c) Have or have access to electronic applications in compliance with PHIN Preparedness Functional Area *Early Event Detection* to support:

[7] Frequently Asked Questions: HSPD 8/National Planning Scenarios/Targeted Capabilities List. Available at: *http://www.ojp.usdoj.gov/odp/assessments/hspd8.htm.*

[8] Homeland Security Presidential Directive #8 *http://www.whitehouse.gov/news/releases/2003/12/print/20031217–6.html.*

[9] Homeland Security Presidential Directive #5 *http://www.fas.org/irp/offdocs/nspd/hspd-5.html.*

[10] Homeland Security Grant Program—FY 2005. Available at: *http://www.ojp.usdoj.gov/odp/docs/fy05hsgp.pdf.*

[11] Guide for All-Hazard Emergency Operations Planning: State and Local Guide 101. Federal Emergency Management Agency. April 2001. *http://www.fema.gov/pdf/rrr/slg101.pdf.*

[12] National Incident Management System Compliance Assessment Support Tool (NIMCAST). *http://www.fema.gov/nimcast/index.jsp.*

[13] Public Health Information Network (PHIN) Preparedness Requirements *http://www.cdc.gov/phin/.*

[14] Emergency Management Independent Study Program , IS 700, National Incident Management System, An Introduction. *http://www.training.fema.gov/EMIWeb/IS/IS700.asp.*

[15] The CNACorporation. Medical Surge Capacity and Capability: A Management System for Integrating Medical and Health Resources During Large-Scale Emergencies. Prepared under Contract Number 233–03–0028 for the Department of Health and Human Services. Alexandria, Virginia: August 2004. Available at: *http://www.cna.org/documents/mscc_aug2004.pdf.*

• Receipt of case or suspect case disease reports 24/7/365.
• Reportable diseases surveillance.
• Call triage of urgent reports to knowledgeable public health professionals.
• Receipt of secondary use health-related data and monitoring of aberrations to normal data patterns.

(d) Develop and maintain protocols for the utilization of early event detection devices located in your community (*e.g.*, BioWatch).

(e) Assess timeliness and completeness of disease surveillance systems annually.

(2) Increase sharing of health and intelligence information within and between regions and States with Federal, local and tribal agencies.

(a) Improve information sharing on suspected or confirmed cases of immediately notifiable conditions, including foodborne illness, among public health epidemiologists, clinicians, laboratory personnel, environmental health specialists, public health nurses, and staff of food safety programs.

(b) Maintain secret and/or top secret security clearance for the State health official, local health officials, preparedness directors, and preparedness coordinators to ensure access to sensitive information about the nature of health threats and intelligence information [16].

(3) Decrease the time needed to disseminate timely and accurate national strategic and health threat intelligence.

(a) Maintain continuous participation in CDC's Epidemic Information Exchange Program (Epi-X)[17].

(b) Participate in the Electronic Foodborne Outbreak Reporting System (EFORS) by entering reports of foodborne outbreak investigations and monitor the quality, completeness or reports and time from onset of illnesses to report entry [18].

(c) Perform real-time subtyping of PulseNet [19] tracked foodborne disease agents. Submit the subtyping data and associated critical information (isolate identification, source of isolate, phenotype characteristics of the isolate, serotype, etc) electronically to the national PulseNet database within 72 to 96 hours of receiving the isolate in the laboratory.

(d) Have or have access to a system for 24/7/365 notification/alerting of the public health emergency response system that can reach at least 90% of key stakeholders and is compliant with PHIN Preparedness Functional *Area Partner Communications and Alerting.*

Measures: (1) Time to receive confirmed case reports of immediately notifiable conditions by public health agency (includes Biowatch and Biohazard Detection Systems (BDS)).

(2) Time for State to notify local/tribal or local/tribal to notify State of receipt of a suspicious or confirmed case report of an immediately notifiable condition (Target: one hour from receipt).

(3) Time to have a knowledgeable public health professional answer a disease report call and begin taking the report 24/7/365 (Target: 15 minutes or less).

(4) Percent of sub-typing data submitted to PulseNet within 72–96 hours of receiving isolate in the laboratory.

Outcome 2B: Hazard and Vulnerability Analysis

Jurisdiction-specific Hazards are identified and assessed to enable appropriate protection, prevention, and mitigation strategies so that the consequences of an incident are minimized.

Required Critical Tasks: (1) Prioritize the hazards identified in the jurisdiction hazard/vulnerability assessment for potential impact on human health with special consideration for lethality of agents and large population exposures within 60 days of cooperative agreement award.

(2) Decrease the time to intervention by the identification and determination of potential hazards and threats, including quality of mapping, modeling, and forecasting.

(3) Decrease human health threats associated with identified community risks and vulnerabilities (*i.e.*, chemical plants, hazardous waste plants, retail establishments with chemical/pesticide supplies).

(4) Through partners increase the capability to monitor movement of releases and formulate public health response and interventions based on dispersion and characteristics over time.

Measures: (1) Time to recommend public health courses of action to minimize human health threats identified in the jurisdiction's hazard and vulnerability analysis (Target: 60 days from identification of risk or hazard).

CDC Preparedness Goal 3: Detect/Report

Decrease the time needed to detect and report chemical, biological, radiological agents in tissue, food, or environmental samples that cause threats to the public's health.

Outcome 3A: Laboratory Testing

Potential exposure and disease will be identified rapidly, reported to multiple locations immediately, and accurately confirmed to ensure appropriate preventive or curative countermeasures are implemented. Additionally, public health laboratory testing is coordinated with law enforcement and other appropriate agencies.

Required Critical Tasks: (1) Increase and maintain relevant laboratory support for identification of biological, chemical, radiological and nuclear agents in clinical (human and animal), environmental, and food specimens [20, 21, 22]

(a) Develop and maintain a database of all sentinel (biological)/Level Three (chemical) labs in the jurisdiction using the CDC-endorsed definition that includes:
• Name.
• Contact information.
• BioSafety Level.
• Whether they are a health alert network partner.
• Certification status.
• Capability to rule-out Category A and B bioterrorism agents per State-developed proficiency testing or College of American Pathologists (CAP) [23] bioterrorism module proficiency testing.
• Names and contact information for in-State and out-of-State reference labs used by each of the jurisdiction's sentinel/Level Three labs.

(b) Test the competency of a chemical terrorism laboratory coordinator and bioterrorism laboratory coordinator to advise on proper collection, packaging, labeling, shipping, and chain of custody of blood, urine and other clinical specimens.

(c) Test the ability of sentinel/Level Three labs to send specimens to a confirmatory Laboratory Response Network (LRN) laboratory on nights, weekends, and holidays.

(d) Package, label, ship, coordinate routing, and maintain chain-of-custody of clinical, environmental, and food specimens/samples to laboratories that

[16] HHS Guidance: *http://198.102.218.46/doc/Security%20Closs%20Guide.doc.*

[17] Epidemic Information Exchange Program (Epi "X) *http://www.cdc.gov/epix/.*

[18] Electronic Foodborne Outbreak Reporting System (EFORS) *http://www.cdc.gov/foodborneoutbreoks/info_heolthprofessional.htm.*

[19] PulseNet *http://www.cdc.gov/pulsenet/.*

[20] CDC: Emergency Preparedness and Response—Lab Issues. *http://www.bt.cdc.gov/lobissues/.*

[21] National Lab Training Network *http://www.phppo.cdc.gov/nltn/defoult.aspx.*

[22] Sentinel (Level A) lab protocols *http://www.osm.org/Policy/index.osp?bid=6342.*

[23] College of American Pathologists (CAP) *http://www.cap.org/opps.cop.portal?_nfpb=rue&_pogeLabel=home_poge.*

can test for agents used in biological, chemical, and radiological terrorism.

(e) Continue to develop or enhance operational plans and protocols that include:

- Specimen/samples transport and handling.
- Worker safety.
- Appropriate Biosafety Level (BSL) working conditions for each threat agent.
- Staffing and training of personnel.
- Quality control and assurance.
- Adherence to laboratory methods and protocols.
- Proficiency testing to include routine practicing of LRN validated assays as well as participation in the LRN's proficiency testing program electronically through the LRN Web site.
- Threat assessment in collaboration with local law enforcement and Federal Bureau of Investigations (FBI) to include screening for radiological, explosive and chemical risk of samples.
- Intake and testing prioritization.
- Secure storage of critical agents.
- Appropriate levels of supplies and equipment needed to respond to bioterrorism events with a strong emphasis on surge capacities needed to effectively respond to a bioterrorism incident.

(f) Ensure the availability of at least one operational Biosafety Level Three (BSL–3) facility in your jurisdiction for testing for biological agents. If not immediately possible, BSL–3 practices, as outlined in the CDC–NIH publication "Biosafety in Microbiological and Biomedical Laboratories, 4th Edition" (BMBL), should be used (see MACROBUTTON HtmlResAnchor *www.cdc.gov/od/ohs*) or formal arrangements (*i.e.*, Memorandum of Understanding (MOU)) should be established with a neighboring jurisdiction to provide this capacity.

(g) Ensure that laboratory registration, operations, safety, and security are consistent with both the minimum requirements set forth in Select Agent Regulation (42 CFR part 73) and the U.S. Patriot Act of 2001 (Pub. L. 107–56) and subsequent updates.

(h) Ensure at least one public health laboratory in your jurisdiction has the appropriate instrumentation and appropriately trained staff to perform CDC-developed and validated real-time rapid assays for nucleic acid amplification (Polymerase Chain Reaction, PCR) and antigen detection (Time-Resolved Fluorescence, TRF).

(i) Ensure the capacity for LRN-validated testing and reporting of Variola major, Vaccinia and Varicella viruses in human and environmental samples either in the public health laboratory or through agreements with other LRN laboratories.

(2) Increase the exchange of laboratory testing orders and results.

(a) Monitor compliance with public health agency (or public health agency lab) policy on timeliness of reporting results from confirmatory LRN lab back to sending sentinel/Level Three lab (*i.e.*, feedback and linking of results to relevant public health data) with a copy to CDC as appropriate.

(b) Comply with PHIN Preparedness Functional Areas *Connecting Laboratory Systems and Outbreak Management* to enable: (a) the linkage of laboratory orders and results from sentinel/Level Three and confirmatory LRN labs to relevant public health (epi) data and (b) maintenance of chain of custody.

Measures: (1) Percentage of LRN biologic and chemical laboratories that demonstrate proficiency in:

- Confirming Category A agents in human clinical specimens (proficiency in accordance with CDC's Laboratory Response Network (LRN) proficiency testing program)
- Confirming Category A agents in food samples.
- Confirming the identity of and further characterizing (*e.g.*, assessment of toxin production, serotyping, phage typing, and DNA "fingerprinting") Salmonella (including Salmonella Typhi), Shigella species, Shiga toxin-producing E. coli and pathogenic vibrios isolated from FOOD samples.
- Confirming Category A agents in environmental samples.
- Confirming chemical agents in human clinical specimens.

(2) Time following initiation of an epidemiological investigation to begin obtaining or directing the acquisition of samples/specimens for laboratory analysis to support epidemiological investigation, as needed (Target: 60 minutes).

(3) For clinical specimens, environmental samples and samples of potentially contaminated food collected by public health personnel in an emergency, time to:

- Send clinical specimens to a reference laboratory within the LRN when an incident may involve an infectious biological agent (Target: within 60 minutes of collection).
- Send clinical specimens to the CDC or CDC-designated State laboratory when an incident may involve a hazardous chemical agent (Target: within 180 minutes of collection).
- Send environmental samples to a reference laboratory within the LRN when the incident requires biological or chemical characterization of an incident scene (Target: within 60 minutes of collection).
- Send potentially contaminated food samples to a reference laboratory within the LRN or coordinate with Food Emergency Response Network (FERN), as appropriate, when the incident might involve food contaminated with a biological or chemical agent [24] (Target: within 60 minutes of collection).

CDC Preparedness Goal 4: Detect/Report

Improve the timeliness and accuracy of information regarding threats to the public's health as reported by clinicians and through electronic early event detection in real time to those who need to know.

Outcome 4A: Health Intelligence Integration and Analysis

To produce timely, accurate, and actionable health intelligence or information in support of prevention, awareness, deterrence, response, and continuity planning operations.

Required Critical Tasks: (1) Increase source and scope of health information.

(2) Increase speed of evaluating, integrating, analyzing for, and interpreting health data to detect aberrations in normal data patterns.

(3) Improve integration of existing health information systems, analysis, and distribution of information consistent with PHIN Preparedness Functional Area Early Event Detection, including those systems used for identification and tracking of zoonotic diseases.

(4) Improve effectiveness of health intelligence and surveillance activities [25].

(5) Improve reporting of suspicious symptoms, illnesses, or circumstances to the public health agency.

(a) Maintain a system for 24/7/365 reporting cases, suspect cases, or unusual events consistent with PHIN Preparedness Functional Area Early Event Detection.

[24] Abrin, Acids and bases, Aconites, actinomycin type protein synthesis inhibitors, Adamsite, Aflatoxin, amanitin toxin (Amanita phalloides), Anatoxin B, Any potent carcinogens or teratogens (*e.g.* benzo[a]pyrene, accutane), Arsenic compounds, Azides, Barium salts, Cancer chemotherapeutic agents, Carbamates, cardioactive glycosides, Colchicine, Copper and arseno-copper compounds, Corrosives (permanganate, chromate, etc), Cyanides, Cycloheximide, Digoxin, Dioxin, Ergot alkaloids, Ethylene glycol, Fluoroacetate salts, Hallucinogens (PCP, LSD, myristosin, others), Ipecac/emetine, Lead compounds, Mercury compounds, Methanol, Microcystins, Nicotine, Organochlorine pesticides, Organophosphate pesticides, Paraquat, Pentachlorophenol and dinitrophenols, Ricin, Rotenone, Sodium nitrite, Strychnine, Superwarfarins, Tetramine, Tetrodotoxin, Thallium salts.

[25] Updated Guidelines for Evaluating Public Health Surveillance Systems *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013A1.htm.*

(6) Increase number of local sites using BioSense for early event detection.

Measures: (1) Percent of local public health agencies using BioSense or other integrated early event detection systems.

(2) Percent of desired non-traditional public health data sources that are currently part of early event detection system (*e.g.*, HMO encounter data, over-the-counter pharmaceutical sales).

CDC Preparedness Goal 5: Investigate

Decrease the time to identify causes, risk factors, and appropriate interventions for those affected by threats to the public's health.

Outcome 5A: Public Health Epidemiological Investigation

Potential exposure and disease will be identified rapidly, reported to multiple locations immediately, investigated promptly, and accurately confirmed to ensure appropriate preventive or curative countermeasures are implemented. Additionally, public health epidemiological investigation is coordinated with law enforcement and other appropriate agencies including tribal and federal agencies.

Required Critical Tasks:

(1) Increase the use of efficient surveillance and information systems to facilitate early detection and mitigation of disease.

(2) Conduct epidemiological investigations and surveys as surveillance reports warrant.

(3) Coordinate and direct public health surveillance and testing, immunizations, prophylaxis, isolation or quarantine for biological, chemical, nuclear, radiological, agricultural, and food threats.

(4) Have or have access to a system for an outbreak management system that captures data related to cases, contacts, investigation, exposures, relationships and other relevant parameters compliant with PHIN preparedness functional area Outbreak Management.

Measures: (1) Time to initiate epidemiologic investigation after initial detection of a deviation from normal disease/condition patterns or a positive "hit" from an early detection device (Target: 3 hours from initial detection).

(2) Time from initial detection of a deviation from normal disease/condition patterns, initial report, or positive "hit" from an early detection device to initiation of intervention (*e.g.*, dissemination of protective action guidance, treatment)

CDC Preparedness Goal 6: Control

Decrease the time needed to provide countermeasures and health guidance to those affected by threats to the public's health.

Outcome 6A: Emergency Response Communications

A continuous flow of critical information is maintained among emergency responders, command posts, agencies, and government officials for the duration of the emergency response operation.

Required Critical Tasks: (1) Decrease the time needed to communicate internal incident response information.

(a) Develop and maintain a system to collect, manage, and coordinate information about the event and response activities including assignment of tasks, resource allocation, status of task performance, and barriers to task completion.

(2) Establish and maintain response communications network.

(3) Implement communications interoperability plans and protocols.

(4) Ensure communications capability using a redundant system that does not rely on the same communications infrastructure as the primary system.

(5) Increase the number of public health experts to support Incident Command (IC) or Unified Command (UC).

(6) Increase the use of tools to provide telecommunication and information technology to support public health response.

(a) Ensure that the public health agency has "essential service" designation from their telephone provider and cellular telephone provider.[26]

(b) Ensure that the public health agency has priority restoration designation from their telephone provider.

(7) Have or have access to a system for 24/7/365 notification/alerting of the public health emergency response system that can reach at least 90% of key stakeholders and is compliant with PHIN Preparedness Functional Area Partner Communications and Alerting.

Measures: (1) Percent of key stakeholders that are notified/alerted using the public health emergency communication system (Target: 90%).

(2) Time to obtain message approval and authorization for distribution of public health and medical information to clinicians and other responders (Target: 60 minutes from confirmation of health threat).

(3) Percent of key stakeholders that are notified/alerted when electricity, telephones, cellular telephone service, and Internet service are unavailable.

(4) Percent of Level Three/Sentinel labs that can reach a designated contact at an LRN laboratory 24/7/365 by phone within 15 minutes OR radio/satellite phone within 5 minutes.

Outcome 6B: Emergency Public Information

The public is informed quickly and accurately, and updated consistently, about threats to their health, safety, and property and what protective measures they should take.

Required Critical Tasks: (1) Decrease time needed to provide specific incident information to the affected public, including populations with special needs such as non-English speaking persons, migrant workers, as well as those with disabilities, medical conditions, or other special health care needs, requiring attention.[27] [28]

(a) Advise public to be alert for clinical symptoms consistent with attack agent.

(b) Disseminate health and safety information to the public.

(c) Ensure that the Agency's public information line can simultaneously handle calls from at least 1% of the jurisdiction's population.

(2) Improve the coordination, management and dissemination of public information.

(3) Decrease the time and increase the coordination between responders in issuing messages to those that are experiencing psychosocial consequences to an event.

(4) Increase the frequency of emergency media briefings in conjunction with response partners via the jurisdiction's Joint Information Center (JIC), if applicable.

(5) Decrease time needed to issue public warnings, instructions, and information updates in conjunction with response partners.

(6) Decrease time needed to disseminate domestic and international travel advisories.

(7) Decrease the time needed to provide accurate and relevant public health and medical information to clinicians and other responders.

Measures: (1) Time to issue information to the public that emphatically acknowledges the event:

[26] Government Emergency Telecommunications Service. Accessed March 8, 2005 *http://gets.ncs.gov/.*

[27] CDC Crisis and Emergency Risk Communication Manual *http://www.orau.gov/cdcynergy/erc/content/activeinformation/resources/CERC_course_materials.htm.*

[28] Emergency Preparedness Initiative Guide on the Special Needs of People with Disabilities for Emergency Managers, Planners, and First Responders *http://www.nod.org/resources/pdfs/epiguide2005.pdf.*

explains and informs the public about risk; provides emergency courses of action; commits to continued communication (Target: 60 minutes from activation of the response plan).

Outcome 6C: Worker Health Safety

No further harm to any first responder, hospital staff member, or other relief provider due to preventable exposure to secondary trauma, chemical release, infectious disease, radiation, or physical and emotional stress after the initial event or during decontamination and event follow-up.

Required Critical Tasks: (1) Increase the availability of worker crisis counseling and mental health and substance abuse behavioral health support.

(2) Increase compliance with public health personnel health and safety requirements.

(a) Provide Personal Protection Equipment (PPE) based upon hazard analysis and risk assessment.

(b) Develop management guidelines and incident health and safety plans for public health responders (*e.g.*; heat stress, rest cycles, PPE).

(c) Provide technical advice on worker health and safety for IC and UC.

(3) Increase the number of public health responders that receive hazardous material training.

Measures: (1) Percent of public health responders that have been trained and cleared to use PPE appropriate for their response roles

Outcome 6D: Isolation and Quarantine

Successful separation, restriction of movement, and health monitoring of individuals and groups who are ill, exposed, or likely to be exposed, in order to stop the spread of a contagious disease outbreak. Legal authority for these measures is clearly defined and communicated to the public. Logistical support is provided to maintain measures until danger of contagion has elapsed.

Required Critical Tasks: (1) Assure legal authority to isolate and/or quarantine individuals, groups, facilities, animals and food products [29] [30] [31] [32]

(2) Coordinate quarantine activation and enforcement with public safety and law enforcement.

(3) Improve monitoring of adverse treatment reactions among those who have received medical countermeasures and have been isolated or quarantined.

(4) Coordinate public health and medical services among those who have been isolated or quarantined.

(5) Improve comprehensive stress management strategies, programs, and crisis response teams among those who have been isolated or quarantined.

(6) Direct and control public information releases about those who have been isolated or quarantined.

(7) Decrease time needed to disseminate health and safety information to the public regarding risk and protective actions.

(8) Have or have access to a system to collect, manage, and coordinate information about isolation and quarantine, compliant with PHIN Preparedness Functional Area Countermeasure and Response Administration.

Measures: (1) Percentage of isolation orders that are violated.

(2) Percentage of quarantine orders that are violated.

Outcome 6E: Mass Prophylaxis and Vaccination

Appropriate prophylaxis and vaccination strategies are implemented in a timely manner upon the onset of an event, with an emphasis on the prevention, treatment, and containment of the disease. Prophylaxis and vaccination campaigns are integrated with corresponding public information strategies.

Required Critical Tasks: (1) Decrease the time needed to dispense mass therapeutics and/or vaccines.

(a) Implement local, (tribal, where appropriate), regional and State prophylaxis protocols and plans.

(b) Achieve and maintain the Strategic National Stockpile (SNS) preparedness functions described in the current version of the Strategic National Stockpile guide for planners.

(c) Ensure that smallpox vaccination can be administered to all known or suspected contacts of cases within 3 days and, if indicated, to the entire jurisdiction within 10 days.[33]

(d) Have or have access to a system to collect, manage, and coordinate information about the administration of countermeasures, including isolation and quarantine, compliant with PHIN Preparedness Functional Area Countermeasure and Response Administration.

(2) Decrease time to provide prophylactic protection and/or immunizations to all responders, including non-governmental personnel supporting relief efforts.

(3) Decrease the time needed to release information to the public regarding dispensing of medical countermeasures via the jurisdiction's JIC (if JIC activation is needed).

Measures: (1) Current rating on the SNS (or CRI for participating cities) preparedness functions based on the CDC SNS assessment tool.

(2) Time to provide prophylactic protection and/or immunizations to all responders, including non-governmental personnel supporting relief efforts.

Outcome 6F: Medical and Public Health Surge

Cases are investigated by public health to reasonably minimize morbidity and mortality rates, even when the numbers of casualties exceed the limits of the normal medical infrastructure for an affected community.

Required Critical Tasks: (1) Improve tracking of cases, exposures, adverse events, and patient disposition.

(a) Have or have access to a system that provides these capabilities consistent with PHIN Preparedness Functional Area Outbreak Management.

(2) Decrease the time needed to execute medical and public health mutual aid agreements.

(3) Improve coordination public health and medical services.

(a) Ensure epidemiology response capacity consistent with hospital preparedness guidelines for surge capacity.

(b) Participate in the development of plans, procedures, and protocols to identify and manage local, tribal, and regional public health and hospital surge capacity.

(4) Increase the proficiency of volunteers and staff performing collateral duties in performing epidemiology investigation and mass prophylaxis support tasks.

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[29] The Model State Emergency Health Powers Act. The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. December 21, 2001. *http://www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf.*

[30] Public Health Emergency Legal Preparedness Checklist: Interjurisdictional Legal Coordination for Public Health Emergency Preparedness. The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. December 2004. *http://www.publichealthlaw.net/Resources/ResourcesPDFs/Checklist%201.pdf.*

[31] Public Health Emergency Legal Preparedness Checklist: Local Government Public Health Emergency Legal Preparedness and Response. The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. December 2004. Accessed January 14, 2005. *http://www.publichealthlaw.net/Resources/ResourcesPDFs/Checklist%202.pdf.*

[32] Public Health Emergency Legal Preparedness Checklist: Civil Legal Liability and Public Health Emergencies. The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. December 2004. Accessed January 14, 2005. *http://www.publichealthlaw.net/Resources/ResourcesPDFs/Checklist%203.pdf.*

[33] Smallpox Response Planning *http://www.bt.cdc.gov/agent/smallpox/response-plan/index.asp.*

(5) Increase the number of physicians and other providers with experience and/or skills in the diagnosis and treatment of infectious, chemical, or radiological diseases or conditions possibly resulting from a terrorism-associated event who may serve as consultants during a public health emergency.

Measures: (1) Percent of volunteers needed to support epidemiologic investigation that have been trained.

(2) Percent of volunteers needed to support mass prophylaxis that have been trained.

CDC Preparedness Goal 7: Recover

Decrease the time needed to restore health services and environmental safety to pre-event levels.

Outcome 7A: Economic and Community Recovery

Recovery and relief plans are implemented and coordinated with the nonprofit sector and nongovernmental relief organizations and with all levels of government. Economic impact is estimated. Priorities are set for recovery activities. Business disruption is minimized. Individuals and families are provided with appropriate levels and types of relief with minimal delay.

Required Critical Tasks: (1) Conduct post-event planning and operations to restore general public health services.

(2) Decrease the time needed to issue interim guidance on risk and protective actions by monitoring air, water, food, and soil quality, vector control, and environmental decontamination, in conjunction with response partners.

Measures: (1) Time needed to issue interim guidance on risk and protective actions during recovery.

CDC Preparedness Goal 8: Recover

Increase the long-term follow-up provided to those affected by threats to the public's health.

Required Critical Tasks: (1) Develop and coordinate plans for long-term tracking of those affected by the event.

(2) Improve systems to track cases, exposures, and adverse event reports.

(3) Increase the availability of information resources and messages to foster community's return to self-sufficiency.

Measures: (1) Percent of cases and exposed successfully tracked from identification through disposition to enable short- and long-term follow-up.

CDC Preparedness Goal 9: Improve

Decrease the time needed to implement recommendations from after-action reports following threats to the public's health.

Required Critical Tasks: (1) Exercise plans to test horizontal and vertical integration with response partners at the federal, State, tribal, and local level.

(2) Decrease the time needed to identify deficiencies in personnel, training, equipment, and organizational structure, for areas requiring corrective actions.

(3) Decrease the time needed to implement corrective actions.

(4) Decrease the time needed to re-test areas requiring corrective action.

Measures: (1) Time needed to identify deficiencies in personnel, training, equipment, and organizational structure, for areas requiring corrective actions (Target: 72 hours after a real event or exercise).

(2) Time needed to implement corrective actions and integrate changes into plans (Target: 60 days after identification of deficiency).

(3) Time needed to re-test areas requiring corrective action (Target: 90 days after identification of deficiency).

International Cross-Border Early Warning Infectious Disease Surveillance (EWIDS) Project (Selected awardees): As in the previous two years, the Office of Public Health Emergency Preparedness within the Office of the Secretary (HHS) is continuing to provide funds for early detection, identification, reporting and investigation of infectious disease outbreaks (both bioterrorist-triggered and naturally occurring) at our borders with Canada and Mexico.

This year, in recognition of the fact that States sharing a common border with a neighboring Canadian province or a Mexican State have some natural affinities and common challenges with respect to planning and implementing cross-border surveillance and epidemiological activities, the Early Warning Infectious Disease Surveillance (EWIDS) program is offering the opportunity for any two or more neighboring States to submit a joint proposal. This approach, which is strictly voluntary, may be most appealing to States that have already undertaken joint planning activities either because they share a common border with a Canadian province or Mexican State or because they wish to leverage their capabilities and resources as well as EWIDS funding. Although EWIDS funds would still be allocated on a State-by-State basis, this approach will capitalize on the synergies created by activities that a number of Border States have initiated.

States interested in this opportunity must jointly develop a common EWIDS proposal that would be broader in scope than what each State could submit on its own. Within the proposal, each of the participating States must clearly identify the specific activities for which it would be individually responsible and accountable. For example, a coalition of four States could each submit the same proposal that they had jointly prepared. In this common proposal, each State would clearly identify a set of activities for which it would assume lead responsibility. There would be minimal duplication of effort among the States and, as a result of the synergy and resource leveraging; all four States would be able to benefit from each other's efforts. States that wish to take advantage of this opportunity must each submit a copy of the common proposal that was jointly developed. However, each State should submit its own budget reflecting not only the specific activities for which it would be responsible but also the amount of its EWIDS funds.

In accordance with their authorizing legislation, EWIDS funds are intended strictly for the support of surveillance and epidemiology-related activities to address bioterrorism and other outbreaks of infectious diseases. EWIDS funds are not to be used to support non-infectious disease surveillance or broader border activities in terrorism preparedness. Consequently, these funds may not be used to finance any chemical, radiological, nuclear or other emergency preparedness activities. Moreover, EWIDS funds cannot be used to supplant surveillance and/or epidemiological activities already supported by other funding sources. Proposed EWIDS activities must be consistent with the laws and regulations of the United States and in harmony with existing binational agreements and guidelines.

The EWIDS guidance can be found in Appendix 2. In substance, this guidance is consistent with the guidance issued last year. However, the structure has been modified to conform to the format that has been established for the broader CDC public health emergency preparedness cooperative agreement. The DSLR MIS template provides space for responses to the EWIDS guidance for eligible applicants. These activities will be updated in the MIS as part of regular progress reports.

Collaboration across State, Tribal, Military, and International Borders: Applicants may use cooperative agreement funds to conduct necessary activities in support of cross jurisdictional planning, coordination, communications, program development, and exercises to enhance health security in the United States. In a jurisdiction that shares State, tribal, military installation or international borders, the

public health agency may use cooperative funds to jointly participate in disaster planning meetings (e.g., city-State-tribal collaboration or city-State-province/State collaboration, etc.); exchange health alert messages; exchange epidemiological data; provide mutual aid; conduct collaborative drills, exercises, and evaluate disaster scenarios. Applicants may propose relevant activities related to meeting the goals, outcomes, tasks or measures as listed above. Proposed activities must be consistent with national laws and regulations of the United States and in harmony with any pre-existing agreements and guidelines.

CDC Responsibilities: 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:

— Technical Assistance

—Integration/Coordination of federal funding for preparedness.

—Subject matter expertise on preparedness activities (e.g., laboratory testing, epidemiology and surveillance).

—Identification of promising practices.

—Development of performance goals and standards.

—Guidance on, and in some cases, conduct, of drills and exercises.

• Monitoring of performance.

• Monitoring adherence to all relevant PHS, HHS, CDC rules, regulations and policies regarding cooperative agreements.

• Facilitate tribal, military, international, DHS and other federal agency efforts into national public health preparedness efforts and coordinate the public health preparedness responsibilities of the NRP where CDC is the designated lead agency.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Approximate Total Funding: Approximately $862 million of fiscal year (FY) 2005 funds are available to fund budget year one of this agreement (August 31, 2005–August 30, 2006) as follows:

$809,956,000: Base funds available for all awardees.

$40,181,000: Urban Area focused funding (to include maintenance of CRI activities in previous 21 awardees) as described in Appendix 3.

$5,440,000: Early Warning Infectious Disease Surveillance (EWIDS) funds available to select awardees (see Appendix 2).

$7,200,000: Chemical Laboratories funds available to select awardees (see Appendix 1).

Each State awardee and Puerto Rico will receive a base amount of $3.91 million, plus an amount equal to its proportional share of the national population as reflected in the U.S. Census estimates for July 1, 2003. The District of Columbia will receive a base amount of $10 million and New York City, Los Angles County, and Chicago will continue to receive a base amount of $5 million. Due to their demographic characteristics and unique programmatic needs, American Samoa, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia and Palau will receive $391,000 per awardee plus a population-based allocation.

In addition to the base amount, approximately $7,200,000 is available for Level One chemical laboratory capacity. Only Level One chemical laboratory activities may be supported with these funds. Level Two and Level Three activities should be supported by base funding.

CDC may increase the number of Level One chemical laboratories from 5 to 10 over the next five years. *However, for budget year one, applicants may only apply for Level One status using their existing funds.* Applicants who wish to apply for Level One funding must have: (a) Completed all current Level Two trainings (b) successfully completed method evaluation (c) successfully completed at least one proficiency test for each method, and (d) be in "qualified" status. New applicants for Level One chemical laboratory capacity should refer to Appendix 1.

Beginning in FY06, CDC envisions that allocation of funds among eligible entities and among preparedness priorities will be influenced increasingly by considerations of (1) the risks and likely medical consequences of various forms of terrorism and other public health emergencies when stratified across States and localities, (2) awardees' performance in enhancing public health and healthcare emergency preparedness, and (3) the relative merits of applicants' proposed initiatives toward selected preparedness priorities as determined by national competition.

Grantees that fail to comply with the terms and conditions of this cooperative agreement, including responsiveness to program guidance, measured progress in meeting the performance measures, and adequate stewardship of these federal funds, may be subject to an administrative enforcement action. Administrative enforcement actions may include temporarily withholding cash payments or restricting a grantee's ability to draw down funds from the Payment Management System until the grantee has taken corrective action.

In circumstances where the grantee is unwilling or unable to take corrective action, and in other appropriate circumstances, CDC may withhold (deny) a continuation award and require that the grantee repay any disallowed costs to the federal government from non-federal funds.

In all instances, grantees are reminded that continuation of funding under this cooperative agreement is additionally contingent upon continued availability of funds.

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months (August 31, 2005–August 30, 2006).

Project Period Length: Year one of a five year project period.

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

Eligible Applicants

Eligibility is limited to those currently funded through cooperative agreement 99051 and authorized under 42 U.S.C. 247d–3.

Cost Sharing or Matching

Matching funds are not required for this program.

IV. Application and Submission Information

IV.1. Electronic Applications Via the DSLR MIS System Are Due on July 13, 2005 11:59 PM EST

See below for more details on accessing and submitting via the DSLR MIS system.

IV.2. Content and Form of Submission

CDC will provide an Internet-based system for submitting applications, including narrative and budget, electronically. This system will also enable applicants to complete most required forms electronically, which can then be signed and uploaded into the system. Applicants are required to use

this system in lieu of paper-based applications. Under separate cover, CDC will provide detailed instructions on obtaining a digital certificate to access the CDC Web portal *https://sdn.cdc.gov* and use the electronic application system. Any questions or problems concerning use of the Internet-based application should be directed to your project officer.

Cooperative Agreement Forms

- All forms will be available from the Secure Data Network (*https://sdn.cdc.gov*). In addition, Form PHS 5161–1 is available from the CDC Procurement and Grants office at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*
- Application budget preparation guidance is also available at: *http://www.cdc.gov/od/pgo/funding/budgetguide2004.htm.*
- Forms SF–424 (Cover page) and SF–424B (Assurances) are available from the DSLR MIS application site and the Office of Management and Budget: *http://www.whitehouse.gov/omb/grants/grants forms.html.*
- Form SF–424A (Budget Information) will be generated and pre-populated automatically from the DSLR MIS budget application site. A blank form SF–424A can also be obtained at the following Internet address: *http://www.whitehouse.gov/omb/grants/grantsforms.html.*

Applications must include a projection of the amount of FY2004 funds that will be unobligated at the end of budget period five (*i.e.*, on August 30, 2005) and report this estimate for each focus area on a separate interim FSR form. (See Unobligated Funds, under C. Availability of Funds.)

International Cross-Border Early Warning Infectious Disease Surveillance Initiatives (Selected awardees): The DSLR MIS template provides space for responses to the International Cross-Border Early Warning Infectious Disease Surveillance (EWIDS) initiatives for eligible applicants. These cross-border issues reflect the broader Departmental goals for cross-border public health security and focus on surveillance of infectious disease outbreaks (both bioterrorist-triggered and naturally-occurring) at our borders with Canada and Mexico. These activities will be updated in the MIS as part of regular progress reports.

IV.3. Submission

To submit the narrative and budget sections of the application electronically, follow the online instructions. The MIS will notify CDC that the application is ready for review and prevent any further changes to the application by the applicant, pending any recommendations from the project officer. The electronic submission process must be completed by the application deadline (11:59 p.m. July 13, 2005 e.s.t.).

Dun and Bradstreet Data Universal Numbering System

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. 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.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

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.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 may not be used for research
- Reimbursement of pre-award costs is not allowed

Use of Funds: Budget year one will begin on August 31, 2005 and extend through August 30, 2006. However, monies may be re-directed between/among goals during the year under the following conditions: (1) Awardees must notify the CDC Grants Office, and (2) copy their CDC Project Officer for all funding re-directions. Prior approval is required for all funding re-directions for sums greater than 25% of the total budget for BY1, or $250,000 (whichever is less).

Vehicles: Cooperative agreement funds under this program may not be used to purchase vehicles or supplant any current State or local expenditures.

Supplantation: The Public Health Service Act, Title I, Section 319(c) specifically States: "SUPPLEMENT NOT SUPPLANT.—Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section." Therefore, the law strictly and expressly prohibits supplantation.

Unobligated Funds: Please submit interim Financial Status Reports (FSRs) estimating the unobligated balance of funds as of August 30, 2005 with the application. Please provide a summary and individual Focus Area FSRs with your application. Send the FSRs to CDC's Procurement and Grants Office (PGO). Estimated unobligated funds should also be reported in Section A—Budget Summary of Standard Form (SF) 424A.

Direct Assistance

Direct Assistance is a financial assistance mechanism, authorized by statute, where by goods or services are provided to recipients in lieu of cash. Direct assistance generally involves the assignment of Federal personnel, the provision of equipment, or the use of federally negotiated contracts. Applicants must discuss all requests for direct assistance with the Division of State and Local Readiness project officer prior to submitting an application.

Funding awarded through direct assistance is part of the total award, not an addition to the award. Direct assistance funds MUST be used in the Federal Fiscal Year (FY) in which they are appropriated. Personnel funded through direct assistance may be split between two federal fiscal years. For example, a career epidemiology field officer hired through direct assistance may be funded from August 31-September 30, 2005, with FY05 funding provided with this award and from October 1-August 30, 2006, with FY06 funding.

Requests for equipment to be purchased through direct assistance:

Direct Assistance (Contracts and Task Orders)

a. To obligate Direct Assistance funds in an amount of less than $100,000,

each applicant must submit a Performance-based Statement of Work for each contract or task order supported by Direct Assistance Funding.

b. To obligate Direct Assistance funds in an amount greater than $100,000, but less than $500,000, each applicant must submit the following items for each contract or task order supported by Direct Assistance funding:

• Performance-based Statement of Work: The Division of State and Local Readiness maintains a variety of Statement of work templates available to any applicant upon request. Although performance-based Statements of work are tailored to the specifics of each project, it should contain these common elements:

—Background—general, non-technical terms and explains why the acquisition is required; its relationship to past, current, or future projects; summary of statutory and applicable program authorities and regulations;

—Project Objective—a succinct Statement of the purpose of the acquisition; outlining expected results; and anticipated benefits.

—Scope of Work—an overall, non-technical description of the work to be performed; expands upon project objectives, while avoiding going into all of the details required. Identifies and summarizes various phases of the projects; define limits in terms of specific objectives, time, special provisions, or limitations. The Scope of Work must be consistent with the detailed requirements.

—Detailed Technical Requirements—Clearly and precisely describe the work in terms of what is to be the required output rather than either how the work will be accomplished or the number of hours to be provided. Provide requirements that do not limit a contractor to providing a specific product or service, rather the contractor is provided with the objectives to be accomplished, the end goal, or the desired achievement, including all pertinent information needed for a contractor or vendor to submit a proposal. As the contractor is, being hired based upon their expertise and ability to perform, the performance-oriented requirements Statement of work places maximum responsibility for performance on the contractor. Identify any budgetary, environmental, or other constraints. Clearly and firmly define and the criteria for acceptance for all end supplies or deliverables associated with the contract.

—Reporting Schedule—Specify how the contractor shows that it has fulfilled it obligations. Clearly identify the performance-based criteria to be used by the Government for acceptance. Define the mechanism by which the contractor can demonstrate progress and compliance with the requirements, and present any problems it may have encountered. The preparation and submission of technical and financial progress reports on a timely basis reflect on a contractor's efforts to certify satisfactory progress. Specific requirements to submit periodic financial and technical progress reports, to include format and templates will be provided by the Division of State and Local Readiness.

—Special Consideration—Include all and any information that does not fit into one of the other sections of the Statement of work.

—References—Provide a detailed list and description of any studies, reports, and other data referred to elsewhere in the Statement of work.

• Independent Government Cost Estimate: The independent government cost estimate is the government's estimate of the costs associated with a particular contract project. The cost estimate determines the amount of money that should be set aside for funding the project and the cost estimate serves as a standard to which the offeror's costs or price proposals will be compared when the offeror's proposal is evaluated. The cost estimate includes direct costs (*i.e.*, labor, material, travel, per diem, printing, consultants, etc.) and indirect costs (*i.e.*, fringe benefits, overhead, and general and administrative expense rates). For this is the government's assessment of the probable cost of the supplies or services to be acquired and serves as a basis for determining the reasonableness of an offeror's proposed costs and understanding of the Statement of work. The cooperative agreement applicant may request assistance in developing a cost estimate from their project officer in the Division of State and Local Readiness.

• Quality Assurance Surveillance Plans: These plans must recognize the responsibility of the contractor to carry out its quality control obligations and must contain measurable inspections and acceptance criteria corresponding to the performance standards contained in the original performance-based Statement of work. This plan must focus on the level of performance required by the performance-based Statement of work, rather than the methodology used by the contractor to achieve that level of performance. The plan may also include:

—Technical progress and financial status reports (already a requirement for all direct assistance projects);

—Site visits to evaluate contract performance against scheduled or reported performance;

—Review of invoices and vouchers to assess reasonableness of costs claimed and relate the total expenditures to the physical progress of the contract, based on monitoring activities (*i.e.*, site visits, progress reports, etc.)

1. Please submit the following documents, electronically, to Gregory Lanman in the Division of State and Local Readiness at *GHL2@cdc.gov*:

a. Contract/Task Order less than $100,000: Submit a performance-based Statement of work as described and outlined in this document.

b. Contract/Task Order greater than $100,000, but less than $500,000: Submit a performance-based Statement of work; independent cost estimate; and quality assurance surveillance plan as described and outlined in this document.

c. If you are considering a contract or task order in an amount larger than $500,000; please contact Gregory Lanman in the Division of State and Local Readiness at (404) 639–7127 as soon as possible.

2. Upon receipt of each contract/task order package, the Division of State and Local Readiness will obtain proposals and quotes for the requested services, supplies, or equipment through federal contract vehicles. The grantee will receive the proposals for review and selection according to their technical evaluation factors. Contract/task order awards will be based upon your evaluation criteria and selection decision.

3. The Division of State and Local Readiness will obligate all Direct Assistance funding and will assume an active partnership as part of your Quality Assurance Surveillance Plan. This partnership will include oversight of the contract/task order, monitoring contract/task order expenditures and funding balances, and by coordinated site visits by the Project Officers of the Division of State and Local Readiness.

4. For additional information or if you have any questions, please contact Gregory Lanman in the Division of State and Local Readiness at (404) 639–7127 or by e-mail at *GHL2@cdc.gov*.

Direct Assistance (Equipment): CDC will provide a list of equipment that may be purchased through direct assistance. Generally, direct assistance equipment purchases are limited to the purchase of laboratory equipment.

Direct Assistance (Personnel): In fiscal year 2005, CDC personnel will be available to provide on-site assistance to State, territorial and local public health agencies in the form of Direct Assistance awards. Placement of these Direct Assistance personnel will be based on the needs of host agencies in a variety of public health disciplines, including public health management, laboratory science, epidemiology, health communications, and environmental health. Direct Assistance personnel assigned through this cooperative agreement will receive training in critical aspects of public health preparedness and emergency response to prepare them to respond to local, State, regional and national public health emergencies.

Deployment of Direct Assistance personnel associated with this cooperative agreement, including specific positions in the Career Epidemiology Field Officers (operated by the National Center for Health Marketing), will be coordinated with the Field Services Activity in the CDC Portfolio Management Project.

Requests for *new* Public Health Readiness Field Program assignees during this budget period should be discussed with the grantee's project officer *prior to* including them in the budget and budget justification sections of your annual funding application. Direct Assistance Personnel costs will be based on published pay and allowances/reimbursement rates established by the Office of Personnel Management. The value of personnel for the budget period will be deducted from the amount of financial assistance that would otherwise be made available to the recipient under the applicable allocation, formula, or other determination of award amount but will be deemed to be part of the award and to have been paid to the recipient.

Public Health Readiness Field Program personnel detailed to a recipient remain Federal employees and are subject to increases, adjustments, and any other benefits that would otherwise apply. Provision for changed costs will be negotiated with the recipient in advance as this may change the amount of financial assistance provided. Recipients will be instructed as to the process and timing for submitting travel authorizations and claims for reimbursement as well as other requests to incur costs or be reimbursed for costs related to personnel details. Recipients shall maintain documentation of payments for in-State and local travel costs and other payments on behalf of detailees as grant-related records. These records are subject to review and audit by or on behalf of CDC.

Direct Assistance Personnel assigned through the Public Health Readiness Field Program are subject to the provisions of the existing Agreement to Detail that defines the respective responsibilities of CDC and recipients regarding Direct Assistance assignments of CDC personnel. CDC will review this agreement with recipient officials upon execution of the detail.

Recipients interested in the Direct Assistance staffing option, should contact their Division of State and Local Readiness project officer to discuss specific staffing needs and how to reflect the request for Direct Assistance personnel in your application. Be prepared to discuss the specific duties and responsibilities proposed for the Direct Assistance assignee and where the assignee would work in your organizational structure.

V. Application Review Information

V.1. Evaluation Criteria

Applications will be reviewed for technical acceptability by project officers from the Coordinating Center of Terrorism Preparedness and Emergency Response and subject matter experts through out CDC. Technical reviewers will be assessing the applications to determine:

- The applicant's current capability to perform the outcomes and critical tasks.
- That the operational plan clearly and adequately addresses the goals, outcomes, tasks, and measures.
- The extent to which the applicant clearly defines an evaluation plan that leads to continuous quality improvement of public health emergency response.
- The extent to which the applicant presents a detailed budget with a line item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of the cooperative agreement.
- Where applicable, the extent to which the applicant presents an operational plan for funds for early detection, reporting and investigation of infectious disease outbreaks (both bioterrorist-triggered and naturally occurring) at our borders with Canada and Mexico.

V.2. Criteria for Level One Chemical Laboratory Capacity

New (competitive) applications for Level One chemical laboratory capacity will be evaluated according to the following criteria:

1. Description of the jurisdiction covered (10 points): the extent to which the application clearly identifies the jurisdiction(s) covered by the proposed activities.
2. Capacity (30 points): the extent to which the applicant demonstrates experience in measurements using mass spectrometry, general experience with a bench-top mass spectrometer, and experience using tandem mass spectrometry for analysis of environmental and biological samples.
3. Operational Plan (40 points): (a) The extent to which the applicant's operational plan clearly and adequately addresses all recipient activities (see Appendix 1) (b) the extent to which laboratory space plans meet or exceed the minimum requirements (c) the extent to which applicant clearly describes past experiences in application content (d) the extent to which applicant clearly describes plans for hiring or designating appropriately qualified staff.
4. Coordination (10 points): the extent to which the applicant demonstrates that the proposed activities will be coordinated with relevant activities currently underway in the applicant's jurisdiction or proposed under other sections of the cooperative agreement program. The extent to which the applicant clearly demonstrates how these activities will be coordinated within the jurisdiction (*e.g.*, at the State level, between State and local agencies, between local agencies, with MMRS if present, and as appropriate, with other States).
5. Support (10 points): inclusion of a letter of support from the State administration agreeing to provide CDC with surge capacity in cases of emergencies. This letter should also show commitment by the State to develop this capacity in their State public health laboratory and allow their State employees to be part of the CDC response.
6. Budget (not scored): the extent to which the applicant presents a detailed budget with a line item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of the cooperative agreement.

V.3. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for technical acceptability by the Coordinating Office of Terrorism Preparedness and Emergency Response and CDC subject matter experts. 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.

New applications for Level One chemical laboratory capacity will be evaluated by an objective review panel using the criteria listed in the "V.1. Criteria" section above. In addition, these applications will also be reviewed by senior federal staff taking into account the results of the independent review, program needs and relevance to national goals, geographic location, and budgetary considerations.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA 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–7 Executive Order 12372
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–16 Security Clearance Requirement
- AR–21 Small, Minority, and Women-Owned Business
- 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. Technical Reporting Requirements

Quarterly Progress Reports for Budget Period One—Progress reports for activities undertaken in budget period, as well as special topics related to the goals and objectives, are due on January 15, 2006 (for activities undertaken August 31–November 30, 2005), April 15, 2006 (for activities undertaken December 1, 2005–February 28, 2006), and July 15, 2006 (for activities undertaken March 1–May 30, 2006). These reports must be submitted through the DSLR MIS. CDC will provide templates for these reports to assess program outcomes related to activities undertaken in BY 01. In addition, awardees may be required to submit information upon request based on changing threat status or national security priorities.

Financial Status Reports—A mid-year estimated financial status report is due May 30, 2006, for the period August 31, 2005–February 28, 2006. The final Financial Status Report (FSR) is due 90 days after the end of the budget period, ending on August 30, 2006. The due date for the FSR is November 30, 2006. Estimated FSRs (through August 30, 2005) are requested with your continuation application (See Unobligated Funds on page 3).

Final Reports—This cooperative agreement will end on August 30, 2006. An original and two copies of the final FSR will be due to the Grants Management Officer named below by November 30, 2006. Final project reports (for activities from June 1–August 30, 2006) should be submitted through the DSLR MIS by November 30, 2006.

Please submit the hard copy of your financial status reports to: Rebecca B. O'Kelley, Acting Chief, Attn: Sharon Robertson, Acquisition and Assistance, Branch VI, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, MS K–75, Atlanta, GA 30341–4146. Telephone: 770–488–2748. E-mail address: *sqr2@cdc.gov.*

Please copy your Project Officer on any electronic submissions.

VII. Agency Contacts

We encourage inquiries concerning this announcement. Programmatic technical assistance for this request may be obtained from your Project Officer.

For general questions, contact:

Sharon Robertson, Grants Management Specialist—Regions 1, 2, 3, 4, 10, Acquisition and Assistance Branch VI, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, Georgia 30341–4146. Telephone: 770–488–2748. E-mail address: *sqr2@cdc.gov.*

Angela Webb, Grants Management Specialist—Regions 5, 6, 7, 8, 9, Acquisition and Assistance Branch VI, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, Georgia 30341–4146. Telephone: 770–488–2784. E-mail address: *aqw6@cdc.gov.*

VIII. Other Information

Attachments will be available from the Secure Data Network (*https://sdn.cdc.gov*).

Appendix 1: Requirements for Level One and Level Two Chemical Laboratories.

Appendix 2: Early Warning Infectious Disease Surveillance (EWIDS) Guidance.

Appendix 3: Cities Readiness Initiative (CRI) Guidance.

Appendix 4: DRAFT Measurement Descriptions and Methods of Data Collection.

Appendix 5: Funding Table.

Dated: May 20, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10537 Filed 5–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Center on Birth Defects and Developmental Disabilities

Name: National Workshop on Mild and Unilateral Hearing Loss.

Times and Dates: 1 p.m.–5 p.m., July 26, 2005. 8:30 a.m.–5 p.m., July 27, 2005.

Place: Beaver Run Resort and Conference Center, 620 Village Road, P.O. Box 2115, Breckenridge, CO 80424, Telephone: (970) 453–6000.

Status: Open to the public, limited only by the space available.

Purpose: The meeting will review and evaluate the scientific research and other data related to mild and unilateral HL to establish recommendations related to identification and appropriate intervention(s) for infants/children. In addition, the meeting will identify potential areas for future research related to mild and unilateral HL.

Matters to be Discussed: The agenda will include a review of the published and unpublished literature assessing the identification and outcomes of infants/children with mild and unilateral HL; a review of screening procedures; diagnostic protocols; follow-up practice;

the role of amplification; models of early intervention; and the need for future research.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Marcus Gaffney, M.P.H., National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., M/S E–88, Atlanta, Georgia 30333. Telephone: (404) 498–3031.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 20, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10541 Filed 5–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., June 21, 2005. 8 a.m.–5 p.m., June 22, 2005.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314, telephone 703/684–5900, fax 703/684–1403.

Status: Open 8 a.m.–8:15 a.m., June 21, 2005. Closed 8:15 a.m.–5 p.m., June 21, 2005. Closed 8 a.m.–5 p.m., June 22, 2005.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8–8:15 a.m. on June 21, 2005, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the study section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–74, Atlanta, Georgia 30333, telephone 404/498–2511, fax 404/498–2569.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 20, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10542 Filed 5–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0169]

Draft Guidance on Useful Written Consumer Medication Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Useful Written Consumer Medication Information (CMI)." CMI is written information developed for consumers about prescription drugs that is distributed to consumers when they have prescriptions filled. The guidance discusses general issues and makes recommendations on the content of useful written CMI.

DATES: Submit written or electronic comments on the draft guidance by July 25, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ellen Tabak, Center for Drug Evaluation and Research (HFD–410), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7843.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Useful Written Consumer Medication Information (CMI)." This draft guidance is intended to assist individuals or organizations (e.g., pharmacies, private vendors, healthcare associations) in developing useful written CMI. CMI is written information about prescription drugs developed by organizations or individuals, other than a drug's manufacturer, that is intended for distribution to consumers at the time of dispensing. Since neither FDA nor the drug's manufacturer reviews or approves CMI, FDA recommends that the developers of written medication information use the factors discussed in this guidance to ensure that their CMI is useful to consumers.

Traditionally, FDA has believed that when people are well-informed about the medications they take, they are able to make better decisions about their healthcare and better use of the prescription medications available to them. Access to useful written information about prescription medications is important to ensuring appropriate use of these products. In 1996, a steering committee comprised of interested stakeholders (including healthcare professionals, consumer organizations, voluntary health agencies, pharmaceutical manufacturers, prescription drug wholesalers, drug information database companies, CMI developers, and

others), facilitated by the Keystone Center, collaboratively developed a report entitled "Action Plan for the Provision of Useful Prescription Medicine Information" (the Action Plan).[1] The Action Plan outlined criteria for evaluating whether a particular piece of written medical information is useful to consumers. It represented the culmination of a long history of efforts aimed at ensuring that consumers receive useful information regarding their prescription medications.

A. Regulatory History Preceding the Action Plan

Since 1968, FDA regulations have required that patient package inserts, written specifically for patients, be distributed to patients when certain prescription drugs, or classes of prescription drugs, are dispensed (see 21 CFR 310.501 for oral contraceptives and 310.515 for estrogens). FDA regulations also require pharmaceutical manufacturers to develop and distribute written patient labeling called Medication Guides for prescription drug products that pose a serious and significant public health concern (21 CFR 208.1(c)). These Medication Guides are required to be written in nontechnical language (21 CFR 208.20(a)(1)). In addition, drug manufacturers have voluntarily agreed with FDA to produce and distribute patient labeling for many other prescription drugs and classes. A description of how the FDA regulations evolved is provided in the following paragaraphs.

1. The First Proposed Rule That Required Written Patient Information

In the 1970s, FDA began evaluating the general usefulness of patient labeling for prescription drugs and, in 1979, published a proposed rule to require written patient information for all prescription drugs (44 FR 40016, July 6, 1979). In 1980, FDA published a final rule establishing requirements and procedures for the preparation and distribution of manufacturer-prepared and FDA-approved patient labeling for a limited number of prescription drugs (45 FR 60754, September 12, 1980). In 1982, FDA revoked those regulations, in part based on assurances by pharmaceutical manufacturers, healthcare professional associations, and private-sector providers of written medication information for patients that the goals of the final rule would be met more effectively and with greater innovation without regulation (47 FR 39147, September 7, 1982). FDA committed itself to monitor the progress of this private-sector effort.

2. The Medication Guide Rule

Periodic FDA surveys showed that although the distribution of written prescription drug information increased, the usefulness of the information was highly variable. Consequently, in 1995, FDA published a proposed rule entitled "Prescription Drug Product Labeling; Medication Guide Requirements" (60 FR 44182, August 24, 1995). The proposal was designed to aid patients in receiving useful written information about the prescriptions they were given by setting specific distribution and quality goals and time frames for achieving them. The goals that FDA proposed in the rule were that, by the year 2000, 75 percent of people receiving new prescriptions would receive useful written patient information with their prescriptions; by 2006, 95 percent of people receiving new prescriptions would receive useful written patient information with their prescriptions. The proposed rule also described criteria for usefulness to permit evaluation of whether the information met the target goals.[2] In addition to setting these goals, the proposed rule was designed to require manufacturers to prepare and distribute Medication Guides for a limited number of prescription drug products that posed a serious and significant public health concern.

3. Medication Guide Legislation

On August 6, 1996, as FDA was reviewing the public comments on the 1995 proposed rule, Public Law 104–180 was enacted.[3] It adopted goals and time frames consistent with the 1995 proposed rule. The legislation also required the Secretary of HHS (the Secretary) to request that a representative group of interested stakeholders collaborate to develop a long-range comprehensive action plan (the Action Plan) to achieve the goals specified in the statute. Required elements of the Action Plan included the following items:

- An assessment of the effectiveness of the current private-sector approaches to providing CMI;
- Development of guidelines for providing effective CMI consistent with the findings of such assessment;
- Identification of components necessary to ensure the transmittal of useful information to the public expected to use the product, including the criteria identified in the 1995 proposed rule; and
- Development of a mechanism to periodically assess the quality of prescription information and the frequency with which that information is provided to consumers.

The law prohibited FDA from taking further regulatory steps specifying a uniform content or format for written information voluntarily provided to consumers about prescription drugs if private-sector initiatives met the goals of the plan within the specified time frames. However, if evaluations showed that the goals were not met, the limitation would not apply, and the Secretary would be required to seek public comment on other initiatives that could meet the goals.

B. The Development and Implementation of the Action Plan

As mentioned previously in this document, a steering committee comprised of interested stakeholders, facilitated by the Keystone Center, collaboratively developed the Action Plan, which the Secretary accepted in January 1997. The Action Plan endorsed the criteria specified in Public Law 104–180 for defining the usefulness of medication information. Specifically, the Action Plan stated that "[p]rescription medicine information shall be useful to consumers" and provided criteria that are intended to define useful CMI. As stated in the Action Plan, useful written information is that which "* * * is sufficiently comprehensive and communicated [in] such [a way] that consumers can make informed decisions about how to receive the most benefit from medicines and protect themselves from harm. Both the substance and presentation of the information are important." Specifically, the Action Plan stated that such materials should meet the following criteria:

- Scientifically accurate;
- Unbiased in content and tone;
- Sufficiently specific and comprehensive;
- Presented in an understandable and legible format that is readily comprehensible to consumers;

[1] Steering Committee for the Collaborative Development of a Long-Range Action Plan for the Provision of Useful Prescription Medicine Information, unpublished report submitted to The Honorable Donna E. Shalala, Secretary of Health and Human Services (HHS), December 1996, available on the Internet at *http://www.fda.gov/cder/offices/ods/keystone.pdf*.

[2] FDA also specified that the usefulness of written patient information would be evaluated based on its scientific accuracy, consistency with a standard format, nonpromotional tone and content, specificity, comprehensiveness, understandable language, and legibility.

[3] Public Law 104–180, Title VI, Sec 601 Effective Medication Guides, 110 Stat 1593 (1996).

- Timely and up-to-date; and
- Useful, that is, enables the consumer to use the medicine properly and appropriately, receive the maximum benefit, and avoid harm.

The Action Plan includes descriptions of the criteria.

1. The Pilot Study That Applied the Action Plan Usefulness Criteria

To test a methodology for assessing the usefulness of CMI in relation to the requirements of the law, FDA contracted with the National Association of Boards of Pharmacy (NABP) to conduct a pilot study. In 1998, NABP arranged for the collection of written materials given to patients who filled new prescriptions for three commonly prescribed drugs from a sample of State pharmacies. An expert panel developed assessment tools, applying the Action Plan criteria, and used them to evaluate the usefulness of the collected CMI materials. The pilot study report[4] was presented by the director of the expert panel and discussed by stakeholders at an FDA public workshop from February 29 to March 1, 2000 (65 FR 7022, February 11, 2000).

2. The National Study That Applied the Action Plan Usefulness Criteria

In 2001, FDA commissioned NABP to conduct a national study to assess the extent to which the year 2000 goals specified in the law had been achieved. A random sample of pharmacies across the continental United States was selected. Patients submitted prescriptions at each pharmacy for four commonly prescribed drugs and collected any written materials given to them when the medications were dispensed. The materials were sent to an expert panel for evaluation against the criteria endorsed by the Action Plan. The results of the study were announced in 2002.

On average, 89 percent of the patients received some form of written medication information. However, the average usefulness of the information was only about 50 percent. The evaluation report[5] is available on the Internet at *http://www.fda.gov/cder/reports/prescriptioninfo/default.htm.*

[4] Svarstad, B. L. and D. C. Bultman, "Evaluation of Written Prescription Information Provided in Community Pharmacies: An 8-State Study," interim report to HHS and FDA, December 1999, available on the Internet at *http://www.fda.gov/cder/calendar/meeting/rx2000/report1.htm.*

[5] Svarstad, B. L. and J. K. Mount, "Evaluation of Written Prescription Information Provided in Community Pharmacies, 2001," final report to HHS and FDA, December 2001.

3. The Advisory Committee Meeting That Led to the Development of This Guidance

The report findings were presented at an FDA Drug Safety and Risk Management Advisory Committee (Advisory Committee) meeting on July 17, 2002 (67 FR 45982, July 11, 2002). In addition, public comments were requested about the steps the private sector was taking to meet the target goals of Public Law 104–180, possible barriers to meeting the goals and plans to overcome those barriers, the role FDA should take in assuring full implementation of the Action Plan, and other initiatives FDA should consider in facilitating achievement of the goals (68 FR 33724, June 5, 2003). The Advisory Committee recommended that FDA take a more active role in advising and encouraging the private sector to meet the next target goal set for 2006. A transcript of FDA's Drug Safety and Risk Management Advisory Committee meeting on July 17, 2002, is available on the Internet at *http://www.fda.gov/ohrms/dockets/ac/02/transcripts/3874t1.htm.* Subsequent to the Advisory Committee meeting, FDA stated its belief that the voluntary approach to improving the distribution of useful CMI could still work to meet the legislatively mandated 2006 level if efforts to improve began immediately. FDA considered the Advisory Committee recommendations, the public comments, and the findings of strong CMI distribution rates but clear deficiencies in quality, and identified three specific areas in need of consensus and action by the relevant stakeholders to meet the 2006 goal. The following areas were identified: (1) Implementation (identifying roles and responsibilities among the stakeholders and methods for overcoming barriers to meeting the goals); (2) evaluation (determining how quality improvements can be made in areas of CMI deficiencies); and (3) education (implementing procedures so that all CMI developers, pharmacists, and professional associations are aware of the statutory requirements).

The agency met with various groups and held a public meeting in 2003 (see *http://www.fda.gov/cder/offices/ods/writtenprescripinfo.htm*). In these meetings, the agency was asked to provide clarification on how the Action Plan should be interpreted and implemented. This guidance is a result of that request. Specifically, this guidance is intended to provide recommendations to developers of CMI regarding how best to evaluate current CMI and develop future CMI to ensure that all CMI meet the usefulness criteria provided in the Action Plan. FDA welcomes comments on all the topics addressed by the guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on useful written CMI. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: May 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10445 Filed 5–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NO1–CM–57018–16.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Affairs, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 18, 2005.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10525 Filed 5–25–05; 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute Special Emphasis Panel, RFA: CA05–026.

Date: July 18–19, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd. Room 8053, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10526 Filed 5–10–25; 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, Special Emphasis Panel for K05s, K24s, and Two types of R25 Applications.

Date: June 28–29, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, PHD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 18, 2005.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10527 Filed 5–25–05; 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 pubic 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, Innovative Technologies for Molecular Analysis of Cancer.

Date: June 16–17, 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: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(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 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10528 Filed 5–25–05; 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 Initial Review Group, Subcommittee H—Clinical Groups, National Cancer Institute Subcommittee H.

Date: July 11–14, 2005.

Time: 3:30 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Deborah R. Jaffe, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Rm 8135, Bethesda, MD 20892, (301) 496–7721, *jaffed@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10529 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 other and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the other, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: May 23–27, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10518 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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 of 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 14, 2005.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Extramural Program, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892. (301) 594–2463. *kittc@niams.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.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin-Diseases Research, National Institutes of Health, HHS)

Dated: May 17, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10521 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel, Synaptic Mechanism I.

Date: June 16, 2005.

Time: 7:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Cognition and Aging.

Date: June 20, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814, 301–496–7705, *hsul@exmur.nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Longevity and Resistance to Stress.

Date: June 29–30, 2005.

Time: 6 p.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: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7708, *binia@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Sleep Meeting.

Date: June 30, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NIA, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10523 Filed 5–25–05; 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 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, NICHD.

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 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 Child Health and Human Development, 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, NICHD.

Date: June 3, 2005.

Open: 8 a.m. to 11 a.m.

Agenda: To review and discuss current NICHD intramural research activities.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, 2A48, Bethesda, MD 20892.

Closed: 11 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: National Institute of Health, Building 31, 9000 Rockville Pike, 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@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.

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 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://www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(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 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10524 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interdisciplinary Training.

Date: June 17, 2005.

Time: 8 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: Bettina D. Acuna, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–1178, *acunab@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interventions and Practice Research Infrastructure Programs.

Date: June 27, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Schizophrenia Related Interventions.

Date: July 8, 2005.

Time: 12:55 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861. *dsommers@mail.nih.gov.*

(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 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10530 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Allergy and Infectious Diseases Special Emphasis Panel; Special Emphasis Panel for the Review of a Single Centrosome Biology K22 Application.

Date: June 7, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. (301) 496–2550. *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 18, 2005.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10531 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(a) 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 section 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 Deafness and Other Communications Disorders Special Emphasis Panel, CDRC Conflicts.

Date: June 23, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd. Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Small Grants Review.

Date: June 29–30, 2005.

Time: June 29, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiguang Yang, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Disordered Language.

Date: July 14, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd. Rockville, MD 20852.

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room

400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 18, 2009.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10532 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, NIBIB Training Review.

Date: June 29–30, 2005.

Time: June 29, 2005, 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: June 30, 2005, 8 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: Jabreel Boyd, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Suite 920, Bethesda, MD 20892, 301–496–8633, *boydjab@od.nih.gov.*

Dated: May 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10534 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 the sixth meeting of the Commission on Systemic Interoperability.

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.

The mission of the Commission on Systemic Interoperability is to submit a report to the Secretary of Health and Human Services and to Congress on a comprehensive strategy for the adoption and implementation of health care information technology standards that includes a timeline and prioritization for such adoption and implementation. In developing that strategy, the Commission will consider: (1) The costs and benefits of the standards, both financial impact and quality improvement; (2) The current demand on industry resources to implement the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and other electronic standards, including HIPAA standards; and (3) The most cost-effective and efficient means for industry to implement the standards.

Name of Committee: Commission on Systemic Interoperability.

Date: June 14, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: Healthcare Information Technology Standards.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, Washington, DC 20201.

Contact Person: Ms. Dana Haza, Director, Commission on Systemic Interoperability, National Library of Medicine, National Institutes of Health, Building 38, Room 2N21, Bethesda, MD 20894. 301–594–7520.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: May 19, 2005.

Anna Snouffer,

Deputy Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 05–10517 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of the Director; 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 the inaugural meeting of the National Science Advisory Board for Biosecurity (NSABB).

Under authority 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established NSABB to provide advice, guidance and leadership regarding federal oversight of usual-use research, defined as biological research with legitimate scientific purposes that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public as indicated below. Pre-registration is recommended due to space limitations. Persons planning to attend should register online at *http://www.biosecurityboard.gov/meeting.asp* or by calling The Hill Group (Heather Thompson) at 301–897–2789, ext. 132. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: June 30–July 1, 2005.

Open: 8 a.m. to 3 p.m.

Agenda: (1) Presentation and discussions on criteria for defining dual-use research in the life sciences and the role of a code of conduct for the life sciences; (2) discuss issues raised by dual-use research with respect to scientific communication, genome synthesis, and international perspectives; (3) public comments; (4) and other business of the committee.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, Maryland.

Contact Person: Thomas Holohan, M.D., NSABB Executive Director, 6705 Rockledge Drive, Bethesda, Maryland 20892. (301) 496–9838.

This meeting will also be webcast. The draft meeting agenda and other information about NSABB, including information about access to the webcast and pre-registration, will be available at *http://www.biosecurityboard.gov.*

Any member of the public interested in presenting oral comments at the meeting may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization

represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments if accepted by the committee. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee. All written comments must be received by June 17, 2005 and should be sent via e-mail to *nsabb@od.nih.gov* with "NSABB Public Comment" as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, Attention Dr. Ansalan Stewart. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: May 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10533 Filed 5–25–05; 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 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: Center for Scientific Review Special Emphasis Panel; National Center for Biomedical Computing.

Date: May 25–27, 2005.

Time: 7:30 pm. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; National Library of Medicine Building, Lister Hill Auditorium, Bethesda, MD 20892.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892. 301–435–1159. *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 17, 2005.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10519 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular Signaling and Dynamics, June 9, 2005, 8 a.m. to June 10, 2005, 5 p.m. Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD, 20815 which was published in the **Federal Register** on May 11, 2005, 70 FR 24829–24832.

The meeting will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: May 17, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10520 Filed 5–25–05; 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: June 15–16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: George M Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. 301–435–0696. *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Candida.

Date: June 16, 2005.

Time: 11 a.m. to 12:10 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: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692. 301–435–1149. *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Emphasis Panel for Pulmonary/Lung /Disorders.

Date: June 16, 2005.

Time: 4:30 p.m. to 5:30 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: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–05–001: Strengthening Behavioral and Social Science in Medical Schools.

Date: June 20–21, 2005.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lynn T. Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892. (301) 594–5287. *nielsenl@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: June 20–21, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892. (301) 435–1776. *davidsoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Vision and Oculomotor Mechanisms.

Date: June 20, 2005

Time: 4:30 p.m. to 5:30 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: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. (301) 435–1713. *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Death and Injury in Chronic Neurodegeneration.

Date: June 22–24, 2005.

Time: 5 p.m. to 5 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: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892. (301) 435–1278. *simpsond@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Wahsington, DC 20037.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892. (301) 435–1050. *freundr@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: June 23–24, 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: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. 301–435–0903. *millsm@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics C Study Section.

Date: June 23–24, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892. 301/435–4511. *whitmarshb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunity and Host Defense.

Date: June 23–24, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation SEP: Flow and Laser Scanning Cytometers.

Date: June 23–24, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2016, MSC 7740, Bethesda, MD 20892. 301–435–2633. *friedje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Metabolic Process in Plants.

Date: June 23, 2005.

Time: 5:30 p.m. to 6:30 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: Sooja K. Kim, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892. (301) 435–1780. *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Multiple Morbidities Interventions.

Date: June 24, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel—Chevy Chase, 4300 Military Road, Tenleytown Conference Room, Washington, DC 20015.

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028C, MSC 7759, Bethesda, MD 20892. (301) 435–1235. *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research on Ethical Issues in Human Studies.

Date: June 24, 2005.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Conference Center, 5701 Marinelli Rd., Bethesda, MD 20852.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Sickle Cell Disease and Gene Therapy.

Date: June 24, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195. *sur@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Clinical Oncology Study Section.

Date: June 26–28, 2005.

Time: 5 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: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 435–1213. *meyerjl@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: June 26–28, 2005.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892. (301) 435–1787. *chenp@csr.nih.gov.*

Name of Committee: Bioiengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: June 27–28, 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: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892. 301–435–2902. *gubina@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Cognitive Neuroscience Study Section.

Date: June 27–28, 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 A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892. 301–435–1247. *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR Pharmacology.

Date: June 27–28, 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: Jerome Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435–2507. *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development of Methods for In Vivo Imaging and Bioengineering Research.

Date: June 27–28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Cardiovascular Devices.

Date: June 27–28, 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: Roberto J. Matus, MD, 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: Center for Scientific Review Special Emphasis Panel; Small Business Medical Imaging: Ultrasound.

Date: June 27, 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: Hector Lopez, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892. 301–435–2392. *lopezh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Medical Imaging: PET/MRI/X-ray.

Date: June 27–28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. (301) 435–1175. *nordstrr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Bioengineering and Physiology.

Date: June 27–28, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892. 301–435–2397. *tandonp@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biolgocial Chemistry B Study Section.

Date: June 27–28, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. 301–435–1728. *radtkem@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle Biology and Exercise Physiology Study Section.

Date: June 27–28, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndam Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. 301–435–6809. *bartletr@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: June 27–28, 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: Bo Hong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892. 301–435–5879. *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology: Small Business Grant Applications.

Date: June 27–28, 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: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892. 301–435–1222. *nigidas@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: June 27–28, 2005.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. (301) 435–1214. *pinkus@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–05–028: Shared Instrumentation: Computer Equipment.

Date: June 27, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Arthur A Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1259. *petrosia@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 17, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10522 Filed 5–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mississippi Sandhill Crane National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Mississippi, Sandhill Crane National Wildlife Refuge in Gautier, MS

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a Comprehensive Conservation Plan and Environmental Assessment for Mississippi Sandhill Crane National Wildlife Refuge, pursuant to the National Environmental Policy Act and its implementing regulations.

The National Wildlife Refuge Service Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, such as opportunities, for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Open house style meeting(s) will be held throughout the scoping phase of the comprehensive conservation plan development process. Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to Mississippi Sandhill Crane National Wildlife Refuge, 7200 Crane Lane, Gautier, Mississippi 39553; Telephone 228–497–6322. To ensure consideration, written comments must be received within 45 days following the date of this notice. Our practice is to make comments, including names and 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.

SUPPLEMENTARY INFORMATION: Mississippi Sandhill Crane National Wildlife Refuge was established in 1975 to safeguard the critically endangered Mississippi sandhill crane and its unique disappearing habitat. Refuge objectives are to: provide protection and management for the cranes; protect and preserve unique wet pine savanna communities; and provide environmental education, interpretation, and wildlife-oriented recreation.

The more than 19,000-acre refuge consists of the Gautier, Ocean Springs, Fontainebleau, and Bluff Creek units. Wet pine savannas, pine scrub, forested swamps, and tidal marshes are the main habitat types of the refuge.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: April 14, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–10539 Filed 5–25–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 30, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 10, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARKANSAS

Jefferson County

Tucker School, Vandalsen Dr., Tucker, 05000538

DISTRICT OF COLUMBIA

District of Columbia

Dupont Circle Historic District (Boundary Increase), Various areas within an area roughly bounded by 16th St., T St., Florida, 23rd and M St. NW., Washington, 05000539

Watergate, 2500, 2600, 2650, 2600 Virginia Ave. NW., 600, 700 New Hampshire Ave. NW., Washington, 05000540

HAWAII

Hawaii County

Holualoa 4 Archeological District (State Site No. 50–10–37–23.661), Ali'i, Kailua-Kona, 05000542

Waimea Elementary School, HI 19, Kawaihae Rd. TMK (3)6–5–07:3, Kamuela, 05000541

KANSAS

Bourbon County

Ware, Eugene, Elementary School, (Public Schools of Kansas MPS), 900 E. Third St., Fort Scott, 05000552

Cowley County

Pilgrim Congregational Church, 101 N. Third St., Arkansas City, 05000545

Montgomery County

Memorial Hall, Jct. of Pennsylvania Ave. and E. Locust St., Independence, 05000554

Phillips County

Long Island School, (Public Schools of Kansas MPS), Washington School, Long Island, 05000551

Rice County

Lyons High School, (Public Schools of Kansas MPS), 401 S. Douglas Ave., Lyons, 05000556

Riley County

Fitz, Leslie A., House, 1014 Houston St., Manhattan, 05000543

Rooks County

Rooks County Record Building, 501 Main, Stockton, 05000555

Scott County

Shallow Water School, (Public Schools of Kansas MPS), 180 Barclay Ave., Shallow Water, 05000553

Sedgwick County

Lewelling, Governor L.D., House, 1245 N. Broadway, Wichita, 05000547

Shawnee County

Topeka High School, 800 SW. 10th Ave., Topeka, 05000550

Stafford County

Conventanter Church, 113 N. Green St., Stafford, 05000544
Spickard, Joseph L., House, 201 N. Green St., Stafford, 05000546

LOUISIANA

Orleans Parish

Frantz, Willaim, School, 3811 N. Galvez St., New Orleans, 05000557

MASSACHUSETTS

Barnstable County

Dennis Village Cemetery, MA 6A and Old Bass River Rd., Dennis, 05000558

Essex County

Haverhill Historical Society Historic District, 2400 Water St., Haverhill, 05000560

Suffolk County

Collins Building, 213–217 Washington St., Boston, 05000559

MISSISSIPPI

Adams County

Fairchild's Creek Bridge, (Historic Bridges of Mississippi TR), Cty Rd. 555, Natchez, 05000562

Claiborne County

Valley of the Moon Bridge, (Historic Bridges of Mississippi TR), Willows Rd., where it crosses Bayou Pierre, 2 mi. SE of Willows, Port Gibson, 05000561

Copiah County

Bayou Pierre Bridge, (Historic Bridges of Mississippi TR), MS 18, Carpenter, 05000565
Pearl River Bridge on Mississippi Highway 28, (Historic Bridges of Mississippi TR), MS 28, Georgetown, 05000566

Hinds County

Henry, R.H., Bridge, (Historic Bridges of Mississippi TR), U.S. 80 at the Big Black River, Edwards, 05000563

MONTANA

Yellowstone County

Erb, Abraham and Carrie, House, 110 4th Ave., Laurel, 05000564

NEW HAMPSHIRE

Carroll County

Chocorua Lake Basin Historic District, Parts of NH 16, Chocorua Lake Rd., Philbrick Neighborhood, Fowles, Washington Hill Rds & Loring, MacGregor & Bolles Rd., Tamworth, 05000569

Sullivan County

North Charlestown Historic District, River Rd., Charlestown, 05000568

NEW YORK

Columbia County

Lynch Hotel, 41 Ferry Rd., Nutton Hook, 05000573

Erie County

Buffalo Electric Vehicle Company Building, 1219–1247 Main St., Buffalo, 05000571

Fulton County

Levor, Gustav, House, 23 Prospect Ave., Gloversville, 05000572

Livingston County

Conesus Amusement Hall, 6210 S. Livonia Rd., Conesus, 05000567

Nassau County

Clapham—Stern House, (Roslyn Harbor, New York MPS), 48 Glenwood Rd., Roslyn Harbor, 05000570

NORTH CAROLINA

Forsyth County

Hanes, P.H., Knitting Company, 675 N. Main St., 101 W. Sixth St. and 600 N. Chestnut St., Winston-Salem, 05000548

Wake County

Smith, Turner and Amelia, House, (Wake County MPS), 12244 Old Stage Rd., Willow Spring, 05000549

OHIO

Cuyahoga County

Lower Prospect—Huron Historic District (Boundary Increase), (Lower Prospect—Huron District MPS), 727, 737, 1020–1060, 1124 Bolivar Rd., 2217 E. 9th St., and 1303 Prospect Ave., Cleveland, 05000580
St. Luke's Hospital, 11311 Shaker Blvd., Cleveland, 05000579

Erie County

Hotel Rieger, (Sandusky MRA), 232 Jackson St., Sandusky, 05000578

Hamilton County

General Hospital Nurses' Home, 311 Albert Sabin Way, Cincinnati, 05000581

Licking County

Colony Burying Ground, Old, (Granville MRA), 250 S. Aom St., Granville, 05000577

Stark County

Hercules Motors Corporation Industrial Complex, 101 11th St. SE., Canton, 05000575

OREGON

Multnomah County

Pfunder, Louis, House, 2211 SW. Vista Ave., Portland, 05000574

RHODE ISLAND

Bristol County

Alfred Drowne Road Historic District, Alfred Drowne Rd., Annawamscutt Rd., Washington Rd., Barrington, 05000584

Kent County

Centreville Mill, 3 Bridal Ave., West Warwick, 05000582

Providence County

Bernon Worsted Mill, 828 Park Ave., Woonsocket, 05000585
Providence Fruit and Produce Warehouse Company Building, 6–64 Harris Ave., Providence, 05000583

SOUTH CAROLINA

Darlington County

Darlington Memorial Cemetery, Ave. D and Friendship St., Darlington, 05000576

SOUTH DAKOTA

Beadle County

Site 39BE2, (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Wessington Springs, 05000589

Brown County

McGregor House, 621 S. Kline St., Aberdeen, 05000591

Fall River County

Site 39FA1303, (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont, 05000587
Site 39FA1639, (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont, 05000586

Lawrence County

Dakota Time and Gold Mine, 20896 Fillmore Mine Ln., Spearfish, 05000592

Roberts County

Site 39RO71, (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Sisseton, 05000588

Spink County

Site 39SP4, (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Tulare, 05000590

UTAH

Davis County

Eldredge, James and Jane, House, 564 W 400 N, West Bountiful, 05000595

Millard County

George Hotel, 100 N. Main, Kanosh, 05000594

Salt Lake County

Butler—Wallin House, 1045 E 4500 S, Salt Lake City, 05000593

Requests for removal have been made for the following resources:

TENNESSEE

Sumner County

Fairvue, 4 mi. S of Gallatin on U.S. 31E, Gallatin vicinity, 75002162

VIRGINIA

Accomack County

Corbin Hall, E of Horntown on VA 679, Horntown vicinity, 72001377

Campbell County

Mansion Truss Bridge, VA 640 over Staunton River, Mansion vicinity, 78003011

Fairfax County

Moorefield, Moorefield Hill Pl., Vienna, 78003014

Greensville County

Spring Hill, VA 730, Emporia vicinity, 85003094

Northampton County

Somers House, SE. of jct of Rtes. 183 and 691, Jamesville vicinity, 70000818

[FR Doc. 05–10489 Filed 5–25–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee (Committee) will meet on June 8, 2005. The second half of the meeting will be held jointly with the California Bay-Delta Authority. The agenda for the Committee meeting will include an orientation for the new Committee members and reports from several of its Subcommittees. The agenda for the joint meeting will include reports from the Director and the Lead Scientist and discussions on short- and long-term funding for the CALFED Bay-Delta Program with State and Federal agency representatives.

DATES: The meeting will be held on Wednesday, June 8, 2005, from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn, 300 J Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Margaret Gidding, California Bay-Delta Authority, at 916–445–5511, or Diane Buzzard, U.S. Bureau of Reclamation, at 916–978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide recommendations to the Secretary of the Interior on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the California Bay-Delta Authority Web site at *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Pub. L. 102–575.)

Dated: May 12, 2005.

Allan Oto,

Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.

[FR Doc. 05–10535 Filed 5–25–05; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1092–1093 (Preliminary)]

Diamond Sawblades and Parts Thereof From China and Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: Effective May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On May 3, 2005, the Commission established a schedule for the conduct of the preliminary phase of the subject investigations (70 FR 24612, May 10, 2005). Subsequently, the Department of Commerce extended the date for its initiation of the investigations from May 23, 2005, to no later than June 13, 2005. The Commission, therefore, is postponing its conference in the investigations from May 24, 2005, to June 15, 2005, to conform with Commerce's new schedule. Any person may submit to the Commission on or before June 20, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigations.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 20, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10574 Filed 5–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–530]

Certain Electric Robots and Component Parts Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the

Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by FANUC Robotics America, Inc. ("FANUC") of Rochester Hills, Michigan. 70 FR 2881 (January 18, 2005). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electric robots and component parts thereof by reason of infringement of claims 1–24 of U.S. Patent No. 6,477,913. The complaint and notice of investigation named Behr Systems, Inc. of Auburn Hills, Michigan, Dürr AG of Stuttgart, Germany, Motoman, Inc. of West Carrollton, Ohio, and Yaskawa Electric Corporation of Kitakyushu, Fukuoka, Japan as respondents.

On April 29, 2005, FANUC moved to amend the complaint and notice of investigation to add respondents Dürr Systems, Inc. of Plymouth Michigan, Dürr Systems GmbH of Bietigheim-Bissingen, Germany, and Dürr Special Material Handling GmbH of Grenzach-Wyhlen, Germany. On May 2, 2005, the ALJ issued an ID (Order No. 7) granting FANUC's motion. No petitions to review the ID were filed. The Commission has determined not to review this ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission Rule 210.42, 19 CFR 210.42.

Issued: May 20, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10492 Filed 5–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–514]

In the Matter of Certain Plastic Food Containers; Notice of Final Determination of Violation of Section 337 and Issuance of General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. Notice is also given that the Commission has issued a general exclusion order in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. Copies of nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: By a notice published on June 22, 2004, the Commission instituted an investigation into alleged violations of section 337 in the importation and sale of certain plastic food containers by reason of infringement of certain claims of U.S. Patent No. 6,056,138 (the "'138 patent"); of U.S. Patent No. 6,196,404 (the "'404 patent"); and of U.S. Design Patent No. D 415,420 (the "'420 patent"). 69 FR 34691 (June 22, 2004). Plastic food containers such as those claimed by the patents in issue are used for packaging foods from restaurants, food processors, and educational and government institutions with food service programs.

On August 19, 2004, complainant Newspring Industrial Corp. ("Newspring") moved for an order directing that each of the two respondents, Jiangsu Sainty Corporation, Ltd. ("Jiangsu") and Taizhou Huasen Household Necessities, Co., Ltd. ("Taizhou"), show cause as to why each should not be found in default for failure to respond to the complaint and notice of investigation. Newspring also requested an order finding the respondents in default if they failed to show cause. On August 27, 2004, the Investigative Attorney ("IA") filed a response in support of the motion for an order to show cause, but opposed any finding that respondents are in default as premature. On August 30, 2004, the ALJ issued Order No. 5, directing respondents to show cause no later than September 17, 2004, why they should not be held in default.

On September 9, 2004, before the ALJ ruled on the motions for default, Newspring filed motions for summary determinations that there has been a violation of section 337 and that a domestic industry has been established with respect to each of the asserted patents. Newspring sought a recommendation for the issuance of a general exclusion order.

On September 23, 2004, the IA filed a response supporting the motions with respect to most but not all issues. He supported a summary determination that the domestic industry requirement had been satisfied as to each of the patents in issue. He also supported a summary determination that Jiangsu had violated section 337 with respect to each of the patents at issue. As to Taizhou, the IA supported a summary determination of violation as to the '420 patent, but not as to the '138 and '404 patents.

On October 12, 2004, the ALJ issued an ID (Order No. 7) with respect to Newspring's motion to find respondents in default. Noting that neither respondent responded to the notice to show cause, the ALJ found the respondents in default. The Commission determined not to review the ID.

On February 10, 2005, the ALJ issued the subject ID (Order No. 8), granting Newspring's motions for summary determinations with respect to most but not all issues. Consistent with the position of the IA, the ALJ determined that a domestic industry had been established with respect to each of the asserted patents, and that Jiangsu had violated section 337 with respect to each asserted patent as well. He determined that Taizhou had violated section 337 with respect to the '420 design patent, but found that a genuine issue of fact remained as to whether the accused Taizhou products infringed the

'138 and '404 utility patents. Accordingly, he denied complainant's motion as to Taizhou in part. The ALJ also recommended the issuance of a general exclusion order and that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the entered value of the infringing imported product. No party petitioned for review of the ID.

On March 18, 2005, the Commission issued a notice of its decision to review the ID. The notice indicated that the review "is for the limited purpose of examining possible formatting and typographical errors contained on one page of the ID." 70 FR 13206, 13206 (March 18, 2005). The notice indicated that the Commission sought comments from the parties to the investigation with respect to the issues under review. It also indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On March 28, 2005, the Commission received comments from Newspring and the IA. No reply submissions were received.

Having examined the relevant portions of the record in this investigation, including the ALJ's Order No. 8, and the written submissions on remedy, the public interest, and bonding, the Commission determined to adopt Order No. 8 as its determination, subject to two formatting and typographical modifications to page 15 of the Order. Further details as to the modifications are provided in Commission's opinion issued in connection with this final determination.

The Commission also determined to issue a general exclusion order prohibiting unlicensed entry for consumption of plastic food containers that infringe the claim of U.S. Design Patent No. D 415,420, claim 1 of U.S. Patent No. 6,056,138, or claim 1 of U.S. Patent No. 6,196,404. In so doing, the Commission determined that the public interest factors enumerated in section 337(g) do not preclude the issuance of the aforementioned remedial order and that the bond during the Presidential review period shall be 100 percent of the entered value of the articles in question. The Commission's order was delivered to the President on the day of its issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(g)(2)), and sections 210.41 and 210.50 of the Commission's Rules of Practice and Procedure, (19 CFR 210.41 and 210.50).

By order of the Commission.

Issued: May 23, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10573 Filed 5–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–459 (Second Review)]

Polyethylene Terephthalate (PET) Film From Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on polyethylene terephthalate (PET) film from Korea.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Effective Date: May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Fischer ((202) 205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On May 9, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 5473, February 2, 2005) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 2, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution;[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 6, 2005, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 6, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by DuPont Teijin Films and Mitsubishi Polyester Film, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 20, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10493 Filed 5–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–376, 563, and 564 (Second Review)]

Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On May 9, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 5478, February 2, 2005) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on June 8, 2005, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before September 7, 2005, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 7, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 20, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10494 Filed 5–25–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by the Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc. (formerly Alloy Piping Products, Inc.), and Taylor Forge Stainless, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on

May 6, 2005, proposed Consent Decrees in *United States* v. *Brook Village Associates Limited Partnership* and *United States* v. *Centerdale Manor Associates*, Civil Action No. 05–CV–195, were lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decrees resolve the United States' claims under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, against Brook Village and Centerdale Manor relating to natural resource damages and response costs that have been or will be incurred at or from a Site known as the Centerdale Manor Restoration Project Superfund Site located in North Providence, Rhode Island. These settlements are based in part upon Brook Village's and Centerdale Manor's limited ability to pay. The Brook Village Consent Decree requires Brook Village to pay a total of $1,451,936 as follows: $1,129,331.12 to the United States Environmental Protection Agency ("EPA"), which will be placed in a Superfund special account; $68,450 to the Department of the Interior ("DOI") for natural resource damages and assessment costs; $150,000 to an escrow account to cover Brook Village's ongoing obligations under previous enforcement orders; $104,154.88 to the State of Rhode Island; and 75% of any future insurance recoveries shall be paid to EPA. The Centerdale Manor Consent Decree requires Centerdale Manor to pay $2,311,364 as follows: $1,920,004.88 to EPA, which will be placed in a Superfund special account; $68,450 to DOI for natural resource damages and assessment costs; $150,000 to an escrow account to cover Centerdale Manor's ongoing obligations under previous enforcement orders; $172,909.12 to the State; and 100% of any future insurance recoveries shall be paid to EPA. The Brook Village and Centerdale Manor Consent Decrees provide covenants not to sue and contribution protection to Brook Village and Centerdale Manor and to current and former general and limited partners, and their officers, directors, heirs, successors and assigns, but only to the extent that the alleged liability of such persons is based solely on their status as and in their capacity as a partner, officer, director, heir, successor, or assign of Brook Village or Centerdale Manor. The Consent Decrees also provide a covenant not to sue and contribution protection to the Rhode Island Housing and Mortgage Finance Corporation.

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 Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Centerdale Manor*, and/or *United States* v. *Brook Village*, D.J. Ref. 90–11–3–07101.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903 and at U.S. EPA, Region 1, One Congress Street, Boston, MA. 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 proposed Consent Decrees 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 no. (202) 514–1547. For a copy of the proposed Consent Decree including the signature pages and attachments, please enclose a check in the amount of $14.00 (25 cents per page reproduction cost) payable to "U.S. Treasury."

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–10488 Filed 5–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 1, 2005, an electronic version of a proposed consent decree was lodged in *United States* v. *Helena Chemical Company*, Civil Action No. 1:05–985 (D.S.C.). The consent decree settles the United States' claims against Helena Chemical Company under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, in connection with the Helena Chemical Superfund Sites: The Helena Superfund Site located on Highway 321 South, approximately one mile south of Fairfax, Allendale County, South Carolina and the Helena Superfund Site located at 2405 North 71st Street in Tampa, Hillsborough County, Florida (the "Sites"). The proposed decree is a final consent decree for past and future costs incurred at both sites. Under the terms of the consent decree, Defendant, Helena Chemical Company, will pay to the United States the sum of $998,500.00 plus interest for past costs incurred by the United States in connection with remedial action at both sites to be paid in six installments within 630 days of entry of the Lodged consent decree. Defendant also agrees to pay all future oversight costs incurred by the United States in connection with remedial actions at both 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* v. *Helena Chemical Company*, Civil Action No. 1:05–985 (D.S.C.) and DOJ #90–11–3–07136.

The consent decree may be examined at the Office of the United States Attorney for the District of South Carolina, 1441 Main Street, Columbia, South Carolina 29201. During the public comment period, the consent decree may be examined on the following Department of Justice Web site: *http:www.usdoj.gov/enrd/open.html*. 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 enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–10486 Filed 5–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Clean Water Act

Notice is hereby given that on May 3, 2005, a proposed Partial Consent Decree

in *United States* v. *City of San Diego,* Civil Action No. NO. 01–CV–0550B (POR) was lodged with the United States District Court for the Southern District of California. The United States' action is consolidated with *San Diego Baykeeper, et al.* v. *City of San Diego,* Civil Action No. 01–CV–0550B (POR).

The United States' action seeks penalties and injunctive relief to address sanitary sewer overflows and other violations of the Clean Water Act ("Act") and the City of San Diego's National Pollutant Discharge Elimination System permit. Under the Partial Consent Decree, the City will: (i) Inspect, rehabilitate, and replace portions of the sewer system; (ii) control root problems; (iii) clean a specified amount of sewer pipe; (iv) implement a grease blockage control program ;(v) perform analyses of canyon-based sewer lines; and (vi) perform projects relating to the capacity of the sewer system.

Pursuant to 28 CFR 50.7, the United States Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Partial Consent Decree. Comments should be addressed to the U.S. Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *The City of San Diego,* Civil Action No. NO. 01–CV–0550B (POR), D.J. Ref. No. 90–5–1–1–4364/1.

The Partial Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, 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. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources.

[FR Doc. 05–10487 Filed 5–25–05; 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—American Society of Mechanical Engineers

Notice is hereby given that, on May 9, 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"), American Society of Mechanical Engineers ("ASME") 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, since December 21, 2004, ASME has revised several consensus committee charters; has published several new standards; and has initiated several new standards development projects, all within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME 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 October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on December 21, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 11, 2005 (70 FR 7307).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–10502 Filed 5–25–05; 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—Interchangeable Virtual Instruments Foundation, Inc

Notice is hereby given that, on May 2, 2005, pursuant to Seciton 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. 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, Pacific Power Source, Irvine, CA has been added as a party 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 Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Seciton 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 July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on February 16, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 2005 (70 FR 12500).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–10498 Filed 5–25–05; 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—New Routes to Ultra-Low-Cost Solar Grade Silicon for Renewable Energy Generation

Notice is hereby given that, on March 14, 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"), New Routes to Ultra-Low-Cost Solar Grade Silicon for Renewable Energy Generation (the "Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. 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(a) of the Act, the identities of the parties to the Joint Venture are: Dow Corning Corporation, Midland, MI; GE Energy USA LLC, Newark, DE; and Crystal Systems, Inc., Salem, MA. The general area of the Joint Venture's planned activity is to provide a virtually unlimited commercial supply of solar-grade silicon at unprecedented low prices in a time frame of three years. This new source of silicon will serve as a feedstock for the large-scale manufacture of photovoltaic solar cells. The goal is to deliver silicon supply for the PV industry with a substantial cost reduction versus semiconductor-grade silicon by utilizing metallurgical processes that will purify the cheap raw silicon presently made for the steel, aluminum, and silicone polymer industries. The activities of the Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–10500 Filed 5–25–05; 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—PXI Systems Alliance, Inc.

Notice is hereby given that, on May 2, 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"), PXI Systems Alliance, Inc. 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, Konrad Technologies, Radolfzell, GERMANY; and VXI Instruments GmbH, Landshut-Altdorf, GERMANY have been added as parties to this venture. Also, General Standards Corp., Huntsville, AL; Kinetic Systems, Lockport, IL; and Lecroy, Chestnut Ridge, NY have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of he group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. 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 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 16, 2005. A notice was published in the **Federal Register** pursuant to Seciton 6(b) of the Act on March 14, 2005 (70 FR 12500).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–10499 Filed 5–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,728]

Alcan Packaging, Carton Manufacturing Department, Including On-site Leased Workers of HTSS, on Assignment/Lab Support and Manpower, Bethlehem, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 20, 2005, applicable to workers of Alcan Packaging, including leased workers of HTSS, Allied Personnel Services, Aerotek, On Assignment/Lab Support, Barton Associates, Synerfac Technical Staffing, Remedy Intelligent Staffing, Accountemps and Office Team, Bethlehem, Pennsylvania. The notice was published in the Federal Register on May 16, 2005 (70 FR 25862).

At the request of a company official and the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that only on-site leased workers of HTSS, On Assignment/Lab Support, and Manpower were employed in the Carton Manufacturing Department, Alcan Packaging, Bethlehem, Pennsylvania.

Based on these findings, the Department is amending this certification to include only on-site leased workers of HTSS, On Assignment/Lab Support and Manpower working at the Carton Manufacturing, Alcan Packaging, Bethlehem, Pennsylvania.

The intent of the Department's certification is to include all workers employed at Alcan Packaging Company, Carton Manufacturing Department who were adversely affected by a shift in production to Canada.

The amended notice applicable to TA–W–56,728 is hereby issued as follows:

"All workers of Alcan Packaging, Carton Manufacturing Department, Bethlehem, Pennsylvania, including on-site leased workers of HTSS, On Assignment/Lab Support, and Manpower, employed in the Carton Manufacturing Department, Alcan Packaging, Bethlehem, Pennsylvania, who became totally or partially separated from employment on or after March 9, 2004, through April 20, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

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

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 05–10548 Filed 5–25–05; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions has been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the

subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 6, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 6, 2005.

The petitions filed in this case are available for inspection at the office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of May 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

TAA Institutions

[Petitions instituted between 05/02/2005 and 05/06/2005]

Subject firm (petitioners)	Location	Contact person	Telephone	TA–W No.	Date of institution
GE Security (Comp)	Gladewater, TX	Judy Sinclair	651–779–4849	57,081	05/02/2005
Hall China Company (The) (Comp)	East Liverpool, OH	Thomas Rodfong	330–385–2900	57,082	05/02/2005
Avx Corporation (Comp)	El Paso, TX	Carl Thele	843–916–7531	57,083	05/02/2005
Kichler (State)	Cleveland, OH	Tony Davidson	800–659–9000	57,084	05/02/2005
Nobles Industries, Ltd. (State)	Hibbing, MN	Jennifer Sterbenz	218–262–6666	57,085	05/02/2005
Makita Corp. of America (Comp)	Buford, GA	James Pearce	770–932–2901	57,086	05/02/2005
Strandflex (Comp)	Oriskavy, NY	Pete Marciniak	914–925–4430	57,087	05/02/2005
Cenveo (Comp)	Cambridge, MD	Rusty Hopkins	410–228–4000	57,088	05/02/2005
Ethicon Inc. (Comp)	San Angelo, TX	Edward Lisoski	325–482–5240	57,089	05/02/2005
Hewlett-Packard (Wkrs)	Corvallis, OR	Kate Wedmar	541–754–3002	57,090	05/03/2005
Northern Hardwoods (State)	South Range, MI	Bill Check	906–487–6410	57,091	05/03/2005
First Inertia Switch (Comp)	Grand Blanc, MI	Glynn Giles	810–953–2307	57,092	05/03/2005
Amco Convertible Fabrics (Comp)	Adrian, MI	Elena Bahn	517–266–3315	57,093	05/03/2005
Lake Eyelet Manufacturing Co. (State).	Southington, CT	Glenn Daniels	860–628–5543	57,094	05/03/2005
EMI—G Knitting, Inc. (Comp)	Fort Payne, AL	Regina Locklear	256–845–9801	57,095	05/03/2005
GE Infrastructure Sensing (State)	Edison, NJ	Ann Miller	732–650–2211	57,096	05/03/2005
Stockmen's, LLC (Wkrs)	Sioux City, IA	Scott Piersma	800–831–4851	57,097	05/03/2005
Monaco Coach Corp. (State)	Bend, OR	Doug Smith	541–317–3638	57,098	05/03/2005
Rada, Inc. (Wkrs)	San Francisco, CA	Robin Lui	415–608–6316	57,099	05/03/2005
D&D, Inc. (NPW)	Greensboro, NC	Maria Bartkavage	610–882–6696	57,100	05/03/2005
Gaylord Inland (State)	Dallas, TX	Delta Nugent	303–403–2825	57,101	05/04/2005
Sharon Young, Inc. (State)	Dallas, TX	Tom Young	972–991–0292	57,102	05/04/2005
Automatic Technology (Comp)	Charlotte, NC	Alex Boryczewski	704–523–2252	57,103	05/04/2005
Matsushita (Comp)	Forest Grove, OR	Julia Phares	503–992–5105	57,104	05/04/2005
Twin City Foods, Inc. (IBT)	Lewiston, ID	Donald Heitmann	206–515–2400	57,105	05/04/2005
Westchester Narrow Fabrics, Inc. (Comp).	Milton, PA	LaWanna Mena	570–742–2658	57,106	05/04/2005
Seaboard Atlantic Garment, Inc. (Comp).	E. Syracuse, NY	Ed Coombs	315–437–2000	57,107	05/04/2005
Parker Hannifin (State)	Minneapolis, MN	Shelly Simpson	440–366–1263	57,108	05/04/2005
TRW Automotive (Wkrs)	Brighton, MI	Rick Fraser	810–220–4619	57,109	05/04/2005
Compeq International (Comp)	Salt Lake City, UT	Ted White	801–990–2000	57,110	05/04/2005
Dayco Products, LLC (State)	Rochester Hills, MI	Lois Wirrig	248–299–1472	57,111	05/04/2005
Broyhill Furniture Ind. (Wkrs.)	Lenoir, NC	Marc Carpenter	828–758–3111	57,112	05/04/2005
Vander-Bend Mfg., LLC (Comp)	Sunnyvale, CA	Holly Bagaj	408–245–5150	57,113	05/04/2005
Selkirk, LLC (SMWIA)	Logan, OH	Charlene Berstler	740–385–5666	57,114	05/04/2005
BASF Corporation (Wkrs)	Southfield, MI	Kristi Karr	248–304–5451	57,115	05/04/2005
Active Quilting (Wkrs)	Plains, PA	Anthony Bartosiewicz	570–823–3127	57,116	05/04/2005
Mayfield Industrial Maint. Comp	Mayfield, KY	Melissa Graves	270–247–1102	57,117	05/05/2005
Luceme Textiles, Inc. (Comp)	New York, NY	Steve Schindler	212–563–7800	57,118	05/05/2005
Hafner, LLC (Wkrs)	Gordonsville, VA	Ingrid Dillmann	450–372–6862	57,119	05/05/2005
MMG North America (State)	Paterson, NJ	Sandy Reese	828–264–8861	57,120	05/05/2005
Sara Lee Branded Apparel—J.E. Morgan (C.	Tamaqua, PA	Mary Jane Horvath	570–952–2221	57,121	05/05/2005
Tower Automotive (Wkrs)	Corydon, IN	Matt Boyce	812–738–5687	57,122	05/05/2005
Page Belting Co., Inc. (Comp)	Concord, NH	Mark Coen	603–225–5523	57,123	05/05/2005
Jeanerette Shipping Co., Inc. (State).	Jeanerette, LA	Mary Hebert	337–276–4238	57,124	05/06/2005
Teleflex Medical (Comp)	Research Triang, NC	Kathy Noel	919–361–3922	57,125	05/06/2005
Tekmax, Inc. (Wkrs)	Tangent, OR	Joan Rose	541–928–7376	57,126	05/06/2005
J.T. Shannon Lumber Co. of PA (Wkrs).	Tidioute, PA	Jennie Brown	800–473–3765	57,127	05/06/2005
Northwest Airlines (State)	Minneapolis, MN	John Bendoraitis	612–726–7614	57,128	05/06/2005
ADM Milling Co. (USWA)	Wellsburg, WV	Kathie Whitley	217–451–2235	57,129	05/06/2005
Barrows Industries (State)	Norwood, MA	John Duggan	508–824–5444	57,130	05/06/2005
Merry Maid Novelties (Comp)	Bangor, PA	Marie Vrontisis	610–599–4104	57,131	05/06/2005
Anderson Precision (Wkrs)	Jamestown, NY	Laura Wright	716–484–6520	57,132	05/06/2005
Sentry Manufacturing Co. (Comp)	Chickasha, OK	Dana Guy	405–224–6784	57,133	05/06/2005

TAA INSTITUTIONS—Continued

[Petitions instituted between 05/02/2005 and 05/06/2005]

Subject firm (petitioners)	Location	Contact person	Telephone	TA–W No.	Date of institution
Zomax, Inc. (State)	Fremont, CA	Jan Buchholz	510–492–5145	57,134	05/06/2005

[FR Doc. 05–10547 Filed 5–25–05; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0223(2005)]

Slings; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in its Standard on Slings (29 CFR 1910.184).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by July 25, 2005.

Facsimile and electronic transmission: Your comments must be received by July 25, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0223(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You also may contact Theda Kenney at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 652 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Slings Standard (29 CFR 1910.184) specifies several collection of information (paperwork) requirements, depending on the type of sling. The purpose of each of these requirements is to prevent employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings. Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed and durable identification stating the size, grade, rated capacity, and reach of the sling. The information, supplied by the manufacturer, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each new, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has been proof tested by the sling manufacturer or an equivalent entity. The certificates of proof testing must be retained by the employer and made available for examination.

Paragraph (f) of the Standard covers wire rope slings. Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings. Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings. Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and type of the repairs made, and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings. Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch, and

type of synthetic web material used in the sling.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings, and codings assist the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the type of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof-testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employees who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements necessitated by the Standard on Slings (29 CFR 1910.184). In its extension request, OSHA also is proposing to reduce the total burden hours for these requirements from 21,517 hours to 19,167 hours. The Agency will include this summary in its request to OMB to extend the approval of the collection of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Slings (29 CFR 1910.184).

OMB Number: 1218–0223.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, local, or tribal government.

Number of respondents: 65,000.

Frequency of Response: On occasion annually;

Average Time per Response: Varies from 1 minute (.02 hour) to maintain a certificate to 30 minutes (.50 hour) for a manufacturing worker to acquire information from a manufacturer for a new tag, make a new tag, and affix it to a sling.

Estimated Total Burden Hours: 19,167.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Acting Assistance Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on May 20, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–10564 Filed 5–25–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Sales of Nondeposit Investments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Interpretive Ruling and Policy Statement No. 05–1; with request for comments.

SUMMARY: The NCUA is proposing to adopt an Interpretive Ruling and Policy Statement (IRPS) on Sales of Nondeposit Investments. The proposed IRPS provides requirements, direction, and guidance to federally-insured credit unions on the establishment and operation of third party brokerage arrangements. The proposed IRPS updates and replaces NCUA's Letter to Credit Unions No. 150 on the sales of nondeposit investments.

DATES: Comments must be received on or before July 25, 2005.

ADDRESSES: You may submit comments by any of the following methods (please send comments by one method only):

- NCUA Web site: *http://www.ncua.gov/news/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov*. Include "[Your name] Comments on Proposed IRPS (Sales of Nondeposit Investments)" in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Introduction

The NCUA Board is proposing to replace its Letter to Credit Unions No. 150 that contains NCUA's current guidance on the sale of nondeposit investments. NCUA issued Letter No.

150 in 1993. Since then, there have been several changes in law and regulation affecting the sale of nondeposit investments. NCUA is proposing to update this guidance, set out certain requirements, and provide additional information in the form of an IRPS. NCUA has selected the IRPS format for several reasons. First, an IRPS is more accessible to credit unions and other interested parties than a Letter to Credit Unions. Second, an IRPS is an appropriate format for disseminating both guidance and requirements. Finally, NCUA does not seek public comment on Letters to Credit Unions but generally publishes an IRPS in proposed form with a request for public comment and, in this case, as certain provisions in the IRPS will have the force of regulation, the Administrative Procedure Act requires public notice and comment. Moreover, NCUA believes public comment on both the requirements and guidance in this IRPS will be very helpful, and NCUA encourages interested members of the public to provide their comments.

B. Background

Credit unions are organized to provide their members with financial services. While in the past credit unions limited member services largely to share accounts and loans, many credit unions now bring their members a full range of financial services. Some credit unions provide their members with investment options beyond share accounts, including: stocks, bonds, mutual funds, and variable annuities. These investment choices are collectively known as nondeposit investments.

Complex federal and state laws govern the creation and transfer of securities, and nondeposit investments, including insurance products sold with an investment component, are subject to securities laws. In particular, Federal securities laws require that those who broker securities register with the U.S. Securities and Exchange Commission (SEC) and comply with SEC regulations. Federal law defines a securities broker as any entity "engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. 78c(a)(4). The SEC interprets the concept of "effecting transactions" very broadly. Generally, the SEC considers not only those who buy and sell securities directly for others as securities brokers, but also those who relay instructions to buy and sell or who otherwise facilitate securities transactions and receive compensation related to the number or size of the transactions.

Credit unions cannot register as securities brokers. The requirements the SEC places on brokers, including capital and reserve requirements, are inconsistent with those that NCUA and state supervisory authorities place on credit unions. If credit unions wish to bring the option of nondeposit investments to their members, they must structure their involvement so that the SEC will not require them to register as brokers.

The most common method credit unions employ is the third party brokerage arrangement. In third party brokerage arrangements, a credit union can facilitate a brokerage firm that is properly registered and licensed with the SEC in selling securities. The SEC permits certain facilitating entities, including credit unions, to receive transaction-related compensation from the brokerage firm without subjecting them to broker registration requirements. In essence, the credit union brings the brokerage firm to its members, the members buy the securities from the broker, and the broker provides transaction-related remuneration to the credit union.

Third party brokerage arrangements can be either bilateral or multilateral. Bilateral arrangements involve an agreement between a credit union and a registered broker. The broker may or may not be a credit union service organization (CUSO). Multilateral arrangements involve an agreement between a credit union, an unregistered CUSO, and a registered broker. The SEC expects a CUSO to register as a broker if its activities rise to the level of "effecting the transfer of securities." Accordingly, a credit union and brokerage firm must limit the involvement of an unregistered CUSO in the sales of nondeposit investments. .

Credit unions have limited powers so, in addition to compliance with securities laws, the nondeposit investment sales activities of credit unions must be authorized under their chartering statutes. Federal credit unions do not have the authority to sell nondeposit investments directly to their members. Under the incidental powers finder activity, however, a federal credit union may bring a third party vendor, the broker, to its members to offer them a financial service, the purchase of investments. 12 CFR 721.3(f). State chartered credit unions must look to their own state law for authority to engage in third party brokerage activities.

The antifraud provisions of applicable federal and state laws prohibit materially misleading or inaccurate representations in connection with offers and sales of securities. The broker could face potential liability if members are misled about the nature of nondeposit investment products, including their uninsured status. The broker could also face potential liability for other improper sales practices, such as account churning or failing to evaluate the suitability of a particular nondeposit investment for a member.

While responsibility for proper sales practices falls on the broker, a credit union could also be liable if it fails to ensure that the brokerage activity is properly separated from the credit union's other activities, such as its deposit taking and lending. Complete separation of the credit union from the nondeposit investment activities is not possible because the sales are being offered to the member through the auspices of the credit union. The broker's sales representative, for example, will often be located on credit union premises, credit union employees may refer members to the sales representative, and credit union employees are permitted to provide literature about nondeposit investments to the member. The use of dual employee sales representatives, meaning an employee who works for both the credit union and the broker, may increase the legal risk to the credit union.

Credit union management must be aware of how the member will perceive the relationship between a credit union and the broker and how the two may be connected in the member's mind. The greater the possible connection, the more management must be involved in oversight of nondeposit investment sales practices. One federal court considered a case where an unsophisticated bank customer took out a mortgage loan to finance speculative securities purchases from the bank's third party broker. The court concluded that various facts, including the use of a dual employee relationship, created a fiduciary relationship between the bank and the customer that the bank violated when it allowed the inappropriate mortgage and securities transaction to occur. *Scott* v. *Dime Savings Bank*, 886 F.Supp. 1073 (S.D.N.Y. 1995), *aff'd* 101 F.3d 107 (2d Cir. 1996), *cert. den.* 520 U.S. 1122 (1997). *See also Conte* v. *U.S. Alliance Federal Credit Union*, 303 F.Supp.2d 220 (D. Conn. 2004)(Existence or not of fiduciary relationship between credit union and member growing out of third party broker nondeposit investment sales is a factual question for the trial jury to decide).

NCUA's Letter No. 150, issued in 1993, contains NCUA's current

guidance to credit unions on the sales of nondeposit investments. Several events since 1993 require that NCUA update the information in Letter No. 150. One change is NCUA's replacement of the Group Purchasing Activities rule with the Incidental Powers rule and the elimination of some restrictions on the compensation a federal credit union may receive from its finder activities. 12 CFR part 721.

Another change is a proposed Securities and Exchange Commission (SEC) regulation that would expand and clarify a credit union's authority to participate in third party brokerage arrangements without requiring the credit union to register as a broker. SEC Regulation B, 69 FR 39682 (June 30, 2004)(Proposed). Regulation B, when finalized, will replace current SEC guidance applicable to credit unions contained in a series of "no action" letters. *See, e.g.,* SEC Letter Re: Chubb Securities Corporation (Nov. 24, 1993). The SEC has not yet finalized Regulation B. If the final Regulation B differs materially from the proposed Regulation B, the NCUA Board will make appropriate changes to the text of the final IRPS. The NCUA Office of General Counsel has also issued several legal opinion letters since 1993 interpreting various aspects of the sale of nondeposit investment sales.

Accordingly, NCUA has determined to update the guidance in Letter No. 150 and issue the update in IRPS form. NCUA believes that the IRPS is a better medium for the information than a letter to credit unions. The IRPS is more accessible, and is also appropriate for both mandatory requirements and guidance.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that NCUA prepare an analysis describing any significant economic impact agency rulemaking may have on a substantial number of small credit unions. 5 U.S.C. 601 *et seq.* For purposes of this analysis, NCUA considers credit unions under $10 million in assets as small credit unions. Since the binding requirements in this IRPS are generally restatements of requirements in other laws and regulations, NCUA does not believe this proposed IRPS will have a significant economic impact on a substantial number of small credit unions. NCUA invites the public to comment on this issue.

Paperwork Reduction Act

NCUA has determined that this proposed IRPS does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This proposed IRPS applies to all credit unions, but does not have 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. NCUA has determined that this proposed IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

By the National Credit Union Administration Board, on May 19, 2005.

Mary Rupp,

Secretary of the Board.

Authority: 12 U.S.C. 1752a, 1756, 1757, 1766, 1783, 1784.

Proposed Interpretive Ruling and Policy Statement No. 05–1; Sales of Nondeposit Investments

I. Introduction

This Interpretive Ruling and Policy Statement (IRPS) provides requirements, direction, and guidance to federally-insured credit unions offering their members nondeposit investments through third party brokerage arrangements. Among other things, this IRPS discusses the relationship between the credit union and the brokerage firm and the responsibilities of each, the separation of investment sales activities from the receipt of deposits or shares, contacts with members concerning securities sales, compensation and referral fees, the use of dual employees, sales to nonmembers, and related issues and concerns.

The information in this IRPS comes from a variety of sources, including the Securities and Exchange Commission (SEC), the National Association of Securities Dealers (NASD), and NCUA. This IRPS addresses the SEC's requirements and related guidance first. The IRPS concludes with additional NCUA requirements and guidance.

II. Purpose

This IRPS supersedes NCUA's Letter to Credit Unions No. 150, Sales of Nondeposit Investments. The information in this IRPS is intended to help credit unions conduct third party brokerage activities in a manner that is legal, protects members from potential securities fraud and abuse, and minimizes safety and soundness concerns for the credit union. The use of the word "must" in this IRPS reflects a legal requirement for credit unions. The use of the word "should" indicates guidance as to best practices.

III. Scope

The scope of this IRPS is sales of nondeposit investments to members through third party brokerage arrangements. This IRPS does not cover:

- No-load money market mutual fund transactions through a sweep account arrangement;
- Securities safekeeping activities, such as IRA custodianships;
- Nondeposit investment transactions for the credit union's own investment account; and
- Transactions in insurance products that do not include an investment component. Examples of these insurance products generally include whole life insurance and insurance sold in connection with loans.

IV. Conduct of Third Party Brokerage Arrangements: SEC Requirements

Sales of nondeposit investments are subject to the securities laws and the regulation and oversight of the SEC. This section contains the SEC's regulatory requirements for the conduct of third party brokerage arrangements at credit unions. After each SEC requirement are additional direction and guidance from National Association of Securities Dealers (NASD) Rule 2350 and the NCUA.

SEC Requirement: The broker must perform brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the credit union. The broker must clearly identify to members that it is providing the brokerage services, not the credit union. Any materials a credit union or broker uses to advertise or promote the availability of brokerage services under the arrangement must comply with federal securities laws. Advertising and promotional material must also clearly indicate that the brokerage services are being provided by the broker and not by the credit union. The credit union or broker must also inform each customer that the securities being offered are not

shares or other obligations of the credit union, are not guaranteed by the credit union, and are not insured by the National Credit Union Administration or any other federal agency.

Credit unions and the brokerage firms must market nondeposit investment products in a manner that does not mislead or confuse members as to the nature or risks of these uninsured products. To avoid member confusion about these products, credit union policies should specifically address the locations at which sales will take place. The best practice is that deposit-taking be physically separated from nondeposit sales functions.

The broker's sales representative must make complete and accurate disclosures to avoid the possibility that a member might confuse an uninsured investment product with an insured share account. When selling, advertising, or otherwise marketing uninsured investment products to members, members must be informed that the products offered:

- Are not federally insured;
- Are not obligations of the credit union;
- Are not guaranteed by the credit union or any affiliated entity;
- Involve investment risks, including the possible loss of principal; and
- If applicable, are being offered by a dual employee who serves both functions of accepting members' deposits and the selling of nondeposit investment products.

These disclosures must be clear and conspicuous, and the broker's sales representative must obtain a separately signed statement acknowledging the disclosures from members at the time a nondeposit investment account is opened. These disclosures must also be featured conspicuously in all written or oral sales presentations, advertising and promotional materials, prospectuses, and periodic statements that include information on both deposit and nondeposit products. Abbreviated versions of the disclosures may be used in certain advertising media as described in NASD Rule 2350.

The sales representative should also, when discussing nondeposit investments with a member face-to-face, display a sign, readily visible to the member, that states: "Investments sold here are NOT offered by the credit union, NOT guaranteed by the credit union, and DO NOT have any federal insurance. These investments may lose value."

To avoid confusion, brokerage firms should not offer investment products with a product name similar to the credit union's name.

SEC Requirement: Credit union employees who are not dual employees of the broker and the credit union may perform only clerical or ministerial functions in connection with brokerage transactions. Clerical and ministerial functions include scheduling appointments with the broker's sales representative, forwarding customer funds or securities, and describing in general terms the types of investments available from the credit union and the broker under the arrangement.

SEC Requirement: Only employees of the brokerage firm, or dual employees of the brokerage firm and the credit union, may receive incentive compensation for brokerage transactions. Other credit union employees may receive compensation for referral of members to the brokerage sales representative if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction. In this context, "nominal" generally means that the payment may not exceed the greater of twenty-five dollars or the wages the employee is paid for one hour of work.

The SEC's Regulation B indexes the maximum amount of a referral fee to inflation, so credit unions seeking to set referral fees as high as the SEC permits should consult with qualified counsel.

SEC Requirement: The credit union must have a written contract with any broker that offers brokerage services on the credit union's premises.

The credit union should also have a written contract with any brokerage firm that offers brokerage services through credit union mailings, e-mails or telephone calls made or sent by the credit union, or through the credit union's Web site.

V. Conduct of Third Party Brokerage Arrangements: Additional NCUA Requirements, Direction, and Guidance

The SEC's regulatory requirements are primarily intended to protect the customer. This section contains additional guidance that is not dictated by or directly related to the SEC's requirements. Much of this guidance relates to the safety and soundness of the credit union.

Risks to the Credit Union

As with any business activity, a credit union's directors must evaluate the risks associated with nondeposit investment activities. The risks include:

- *Legal Risk:* The credit union could be held liable for abusive sales practices perpetrated by nondeposit investment sales representatives.
- *Reputation Risk:* The credit union could be damaged by association with abusive sales practices, even if not liable for the practices.
- *Economic Risk:* The credit union could lose money if it commits itself to pay any expenses associated with the nondeposit investment activity and the sales and associated revenue are insufficient to pay those expenses.

Due Diligence in Selecting an Appropriate Brokerage Firm

Before entering into a third party brokerage arrangement, credit unions must take care to select an appropriate brokerage firm. For each firm under consideration, the credit union should:

- Ensure the firm can provide the services that credit union members need.
- Review the firm's financial statements and capital adequacy.
- Determine if the firm can adequately supervise its sales representatives at the credit union's location.
- Ask the firm to provide references, preferably other depository institutions, and talk with those references.
- Conduct background and NASD checks on the firm's principals and the sales representatives that will be working at the credit union.

Credit Union Policies, Procedures, and Contracts

The credit union must adopt written policies and procedures concerning the brokerage arrangement. Many of these policies and procedures should be reflected in the contract with the brokerage firm. At a minimum, the policies, procedures, and contracts should address:

- *The features of the sales program.* Credit union policies should describe the types of products that a broker may offer through the third party brokerage arrangement. For all products, the credit union should identify specific laws, regulations, and any other limitations or requirements, including qualitative considerations, that will expressly govern the selection and marketing of products a broker may offer. Qualitative considerations include an analysis of the level of complexity and volatility in the investments that you will permit the broker to offer your members.
- *A description of the relative responsibilities of the credit union and the brokerage firm.* The credit union's policies and the contract between the brokerage firm and the credit union must make clear that the brokerage firm is primarily responsible for ensuring that the nondeposit sales function is conducted in compliance with all

applicable laws, regulations, and policies. The contract should, however, recognize that the credit union has the right to check for compliance and may access member accounts for verification and oversight.

- *Indemnification by the brokerage firm.* Credit unions policies should require a specific and unambiguous contractual agreement from the brokerage firm to indemnify the credit union for any monetary damages arising from nondeposit sales activities, including but not limited to improper sales practices.
- *The roles of credit union employees.* Credit union policies should describe the roles of credit union employees in nondeposit investment sales and the limits on their activities. The limits and compensation for referrals must be consistent with SEC requirements.
- *The roles of brokerage firm employees.* Credit union policies should require the brokerage firm to provide the credit union with a written document that explains the duties of its sales representatives and gives the credit union the names, contact information, and specific duties of those who will supervise the sales representatives.
- *The location of nondeposit sales.* Credit union policies should describe where nondeposit sales may take place and how those sales will be separated from deposit-taking activities.
- *The use of credit union member information.* The credit union's policies should describe the information that may be transferred between the credit union and the brokerage firm or the brokerage firm's sales representative. The policies and contracts should describe how such information will be used and safeguarded and the associated privacy notices to members. The policies and contract terms must comply with NCUA's Privacy of Consumer Financial Information Rule and NCUA's Security Program Rule. 12 CFR parts 716 and 748. The brokerage firm must agree in writing to comply with the credit union's policies on information practices.
- *Termination of the contract.* The contract should contain a provision that permits the credit union to terminate the contract for both cause and for the convenience of the credit union. Failure by the brokerage firm to adequately supervise its sales representative should be included as a specific for-cause reason for contract termination.
- *Compliance with the requirements in this IRPS and applicable law and regulation.* Credit unions must maintain programs to monitor compliance by the broker, its salespeople, and other entities involved in the sales of nondeposit investments. Credit union personnel performing the compliance function should be independent of any credit union personnel involved in investment product sales and management. At a minimum, the compliance function should include a system that monitors member complaints; ensures supervisory personnel at the broker make scheduled examinations of their sales personnel; and contacts members that have purchased nondeposit investments to ensure they received and understood the required disclosures. Compliance personnel should also conduct periodic, random samplings of account activity to look for evidence of abuse. When conducting sampling, compliance personnel should look for evidence such as:
  - Accounts with a high rate of investment turnover, which may indicate the sales representative is churning accounts to generate commissions;
  - Accounts with complex investments that may be unsuitable for the particular member; and
  - A combination of loan accounts and nondeposit investment accounts that might indicate a member borrowed large sums of money from the credit union to finance nondeposit investment purchases.

Credit unions should consult with qualified counsel for further information about what to review when examining member accounts. The intensity of the credit union's compliance effort will depend on the nature and extent of nondeposit investment sales, evidence of the effectiveness of the broker's compliance systems, and the level of member complaints. Whether the credit union can obtain an unambiguous indemnification agreement from the brokerage firm should also affect the intensity of the compliance effort.

The Use of Dual Employees

Credit unions may establish a third party brokerage arrangement using dual employees. These arrangements create additional risk for the credit union and must be designed, operated, and monitored carefully.

- *Separation of duties.* A dual employee should have separate, written job descriptions for the duties performed for the credit union and the nondeposit investment sales duties, which are performed for the brokerage firm. The duties performed for the credit union should be unrelated to the sale of nondeposit investments. The duties performed for the credit union should not bring the employee into contact with members that might also purchase nondeposit investments. The dual employee should have no management or policy-setting responsibilities within the credit union related to nondeposit investments.
- *Separation of employment descriptions when interacting with members.* The dual employee should not use any materials that could potentially confuse a member as to the capacity in which the dual employee is functioning. For example, dual employees should use separate business cards for their credit union and nondeposit investment sales functions. Likewise, dual employees should use separate stationary for nondeposit investment correspondence and credit union correspondence and, when conducting nondeposit investment business, dual employees should not reference their positions at the credit union.
- *Dual employee compensation.* The compensation a dual employee receives for nondeposit investment activities may be paid directly by the broker to the employee. Alternatively, the broker may reimburse the credit union for the employee's nondeposit investment activities. The credit union's records and the periodic earnings statement provided to the employee should indicate how compensation is divided between nondeposit investment work and work for the credit union. A dual employee should also have written agreements with the two employers establishing the amount of each employer's compensation to the employee.
- *Indemnification.* The use of dual employees increases the risk a credit union may be held liable for abusive sales practices. At the same time, the brokerage firm may have less incentive to supervise nondeposit sales activities properly when conducted by a dual employee. Accordingly, the credit union should seek an indemnification agreement from the brokerage firm as described above. The credit union should also seek fidelity bond coverage or additional insurance for any credit union liability arising from employee misconduct related to the nondeposit investment function.

Sales of Nondeposit Investments to Nonmembers

Because credit unions may only provide services to members, a credit union may generally only accept income and pay expenses associated with nondeposit investment sales to its members. NCUA realizes, however, that in some cases it may be difficult for a credit union to connect particular

income to a transaction involving a member. For example, some sales representatives may have generated sales that occurred before the representative joined the brokerage arrangement. These representatives may bring with them a stream of trailer income that cannot now be associated with any particular person or is not otherwise attributable to members of the credit union. A similar situation may arise in brokerage arrangements involving multiple credit unions working with one broker and sales made to members of the various credit unions.

To address these situations, NCUA will allow a credit union in a third party brokerage arrangement to accept a *de minimus* amount of income that is not directly attributable to sales to its members. In this context, *de minimus* means that the ratio of income not directly attributable to members to the total gross income the credit union receives under the arrangement cannot exceed five percent.

A similar issue may arise if a credit union pays expenses associated with the sales of nondeposit investments. NCUA will allow a credit union in a third party brokerage arrangement to pay a de minimus amount of expenses associated with the sale of nondeposit investments to nonmembers. In this context, *de minimus* means that the ratio of nonmember sales expenses paid by the credit union to the total expenses paid by the credit union under the arrangement cannot exceed five percent.

VI. Applicable Law and Regulation

- The Federal Credit Union Act, 12 U.S.C. 1751 *et seq.*
- The Securities and Exchange Act of 1934, § 3(a)(4), 15 U.S.C. 78a *et seq.*
- Regulation B, Securities Activities of Banks and Other Financial Institutions, 15 CFR 242.710 *et seq.*
- NASD Rule 2350, Broker/Dealer Conduct on the Premises of Financial Institutions.
- NASD Rule 3040, Private Securities Transactions of an Associated Person.

[FR Doc. 05–10381 Filed 5–25–05; 8:45 am]
BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice; the first notice was published at 70 FR 13544 and no comments were received. Comments regarding (a) whether the 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 burden 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (703) 292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Applicant Survey.

OMB Approval Number: 3145–0096.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The current National Science Foundation Applicant survey has been in use for several years. Data are collected from applicant pools to examine the facial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the Information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

Burden on the Public: The Foundation estimates about 8,000 responses annually at 1 minute per response; this computes to approximately 133 hours annually.

Dated: May 20, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–10484 Filed 5–25–05; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 9981 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF'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 to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Science Honorary Awards.

OMB Control No.: 3145–0035.

Abstract: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSB Vannevar Bush Award, and the NSB Public Service Award.

In 2003, to comply with E-government requirements, the nomination processes were converted to electronic submission through the National Science Foundation's (NSF) FastLane system. Individuals can now prepare nominations and references through *http://www.fastlane.nsf.gov/honawards/* . First-time users must register on the Fastlane Web site using the link found in the upper right-hand corner above the "Log In" box before accessing any of the honorary award categories.

Use of the Information: The Foundation has the following honorary award programs:

• President's National Medal of Science. Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that "(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate."

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would "receive recommendations made by any other nationally representative scientific or engineering organization." On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980.

The Committee established the following guidelines for selection of candidates:

1. The total impact of an individual's work on the present state of physical, biological, mathematical, engineering, or social and behavioral sciences is to be the principal criterion.

2. Achievements of an unusually significant nature in relation to the potential effects of such achievements on the development of scientific thought.

3. Unusually distinguished service in the general advancement of science and engineering, when accompanied by substantial contributions to the content of science at some time.

4. Recognition by peers within the scientific community.

5. Contributions to innovation and industry.

6. Influence on education through publications, students.

7. Must be a U.S. citizen or permanent resident who has applied for citizenship.

In 2003, the Committee changed the active period of eligibility to three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Narratives are now restricted to two pages of text, as stipulated in the guidelines at *http://www.fastlane.nsf.gov/honawards/nms*.

• Alan T. Waterman Award. Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (P.L. 94–86) and authorized NSF to "establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering" to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Pub. L. 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendation to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the Ph.D. degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• Vannevar Bush Award. The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The award recognizes an individual who, through public service activities in science and technology, has made an outstanding "contribution toward the welfare of mankind and the Nation."

The NSB *ad hoc* Vannevar Bush Award Committee annually solicits nominations from selected scientific engineering and educational societies. Candidates must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished him/herself through public service activities in science and technology.

2. Pioneered the exploration, charting and settlement of new frontiers in science, technology, education and public service.

3. Demonstrated leadership and creativity that have inspired others to distinguished careers in science and technology.

4. Contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Demonstrated leadership and creativity that have helped mold the history of advancements in the Nation's science, technology, and education.

Nominations must include a narrative description about the nominee, a curriculum vitae (without publications), and a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science. Nominations must also include two reference letters, submitted separate from the nomination through *http://www.fastlane.nsf.gov/honawards/*. Nominations remain active for three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

• NSB Public Service Award. The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations that have increased the public understanding of science or engineering. The award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientist and engineers.

6. Achieved broad recognition outside the nominee's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Nominations must include a summary of the candidate's activities as they relate to the selection criteria; the nominator's name, address and telephone number; the name, address, and telephone number of the nominee; and the candidate's vita, if appropriate (no more than three pages).

The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 15 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 137 responses, broken down as follows: For the President's National Medal of Science, 55; for the Alan T. Waterman Award, 50; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimated Total Annual Burden on Respondents: 2,280 hours, broken down by 900 hours for the President's National Medal of Science (20 hours per 45 respondents); 900 hours for the Alan T. Waterman Award (20 hours per 60 respondents); 180 hours for the Vannevar Bush Award (15 hours per 12 respondents); and 300 hours for the Public Service Award (15 hours per 20 respondents).

Frequency of Responses: Annually.

Dated: May 23, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–10586 Filed 5–25–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Final Rule—10 CFR part 110, Export and Import of Radioactive Materials: Security Policies.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Any licensee who wishes to export or import the radioactive material subject to the requirements of a specific license listed in Table 1 of the new appendix P to part 110.

6. *An estimate of the number of annual responses:* 950.

7. *The estimated number of annual respondents:* 30.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 437.5 hours (30 minutes per notification and 15 minutes per recipient's certification to licensee).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export and import of nuclear equipment and radioactive materials. This final rule reflects recent changes to the nuclear and radioactive material security policies of the Commission and the Executive Branch, for the import and export of radioactive material. A specific license will be required for the import and export of the radioactive material listed in Table 1 of the new appendix P to this part.

A copy of the 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 packages 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 by July 25, 2005: John A. Asalone, Office of Information and Regulatory Affairs (3150–AH44), NEOB–10202, Office of Management and Budget.

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 19th day of May 2005.

For the Nuclear Regulatory Commission.

Brenda J. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–10550 Filed 5–25–05; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of a new system of records—PBGC–15, Emergency Notification Records—PBGC.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is establishing a new system of records, PBGC–15, Emergency Notification Records—PBGC, subject to the Privacy Act of 1974, as amended. Emergency contact information from the new system of records will be used, in the event of an emergency, disaster, or other event that affects PBGC's operations, to issue special instructions and announcements to PBGC employees and contractors through an automated calling and notification system, and for other related purposes.

DATES: Comments on the new system of records and proposed routine uses must be received on or before June 27, 2005. The new system of records will become effective July 11, 2005, without further notice, unless comments result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/privacyact*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov*. Copies of the comments may also be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4000 Ext. 3672. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: As part of its continuity of operations plan, the PBGC is implementing an automated messaging and notification system to disseminate special instructions and announcements to PBGC employees and contractors if an emergency, natural disaster, or other event occurs that affects PBGC's operations. Employees and contractors will be assigned user IDs and passwords to access the system through the PBGC's intranet website and instructed to input personal telephone, cell, or pager numbers, or personal electronic mail addresses where they can be reached during off-duty hours to receive information about PBGC's operating status. When an emergency occurs, authorized PBGC officials will record telephone messages or write electronic mail messages for the automated messaging and notification system to disseminate to all or selected groups of PBGC employees and contractors at the telephone numbers or electronic mail addresses they provided. To ensure that emergency contact information remains current, employees and contractors will be periodically reminded to access the system using their password to make any necessary changes.

Under the PBGC's continuity of operations plan, certain authorized PBGC employees will have access to paper printouts of all or relevant portions of the emergency contact information to use to make telephone calls or send e-mail messages to employees and contractors about the PBGC's operations if the automated messaging and notification system is unavailable. The emergency contact information will also be used by authorized employees on an occasional basis to contact an employee or contractor who is out of the office on leave or after regular duty hours to obtain information necessary for official business, or to contact friends or family members if an employee or contractor experiences a medical emergency in the workplace.

PBGC general routine uses G1, Law Enforcement, G4, Disclosure in Litigation, G5, Disclosure to the Department of Justice in Litigation, and G7, Congressional Inquiries apply to this system of records. These routine uses were published as the PBGC's Prefatory Statement of General Routine Uses at 60 FR 57462, 57563 (Nov. 15, 1995).

Issued in Washington, DC this 19th day of May, 2005.

Bradley D. Belt,

Executive Director, Pension Benefit Guaranty Corporation.

PBGC–15

SYSTEM NAME:

PBGC–15, Emergency Notification Records—PBGC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and individuals who work for the PBGC as contractors or as employees of contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, title, organizational component, employer, PBGC and personal telephone numbers, PBGC and personal e-mail addresses, other contact information, user ID, a temporary, PBGC-issued password, and a user-selected password.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; E.O. 12,656, 53 FR 47491 (1988); Presidential Decision Directive 67 (1998).

PURPOSE(S):

This system of records is maintained for use in notifying PBGC employees and individuals who work for the PBGC as contractors or employees of contractors of PBGC's operating status in the event of an emergency, natural disaster or other event affecting PBGC operations; for contacting employees or contractors who are out of the office on leave or after regular duty hours to obtain information necessary for official business; or to contact friends or family members if an employee or contractor experiences a medical emergency in the workplace.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PBGC General Routine Uses G1, G4, G5, and G7 apply to this system of records

(*See* Prefatory Statement of General Routine Uses, 60 FR 57462, 57563 (1995)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained an electronic database that is available to authorized PBGC employees and contractors who have been granted access to PBGC's intranet website.

RETRIEVABILITY:

Records are indexed by name, organizational component, or user ID and password.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with the PBGC's Automated Information Systems Security Program to protect the security, integrity, and availability of the information, and to assure that records are not disclosed to or accessed by unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained until they are out of date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Facilities and Services Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR part 4902.

RECORD ACCESS PROCEDURES:

An employee or contractor may access his or her record with a valid user-id and password via the electronic notification and messaging system through the PBGC's intranet website, or by following the procedures outlined at 29 CFR part 4902.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–10575 Filed 5–25–05; 8:45 am]
BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51721; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 14 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Limitation in Liability for Filling Satisfaction Orders Sent Through the Linkage at the End of the Trading Day

May 19, 2005.

I. Introduction

On January 28, 2005, January 31, 2005, January 26, 2005, January 27, 2005, January 28, 2005, and January 28, 2005, the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc. ("ISE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] an amendment ("Joint Amendment No. 14") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").[3] On January 31, 2005, the Commission summarily put into effect Joint Amendment No. 14, on a temporary basis not to exceed 120 days, and solicited comment on Joint Amendment No. 14 from interested persons.[4] The Commission received no comments on Joint Amendment No. 14. This order approves Joint Amendment No. 14.

II. Description of the Proposed Amendment

In Joint Amendment No 14, the Participants propose to extend the pilot contained in Section 8(c)(ii)(B)(2)(b) of the Linkage Plan, which limits Trade-Through[5] liability at the end of the trading day for an additional year, until January 31, 2006, and to increase the limitation on liability from 25 contracts to 50 contracts, per Satisfaction Order[6] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the option class.

III. Discussion and Commission Findings

When the Participants initially proposed the limitation on Trade-Through liability at the end of the trading day in Joint Amendment No. 4 to the Linkage Plan,[7] the Participants represented to the Commission that the Participants' members had expressed concerns regarding their obligations to fill Satisfaction Orders (which may be sent by a Participant's member that is traded through) at the close of trading in the underlying security. Specifically, the Participants represented that their members were concerned that they may not have sufficient time to hedge the positions they acquire.[8] The Participants stated that they believed that their proposal to limit liability at the end of the options trading day to the filling of 10 contracts per exchange, per transaction, would protect small customer orders, but still establish a reasonable limit for their members' liability. The Participants further represented that the proposal should not affect a member's potential liability under an exchange disciplinary rule for engaging in a pattern or practice of trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

The Commission approved Joint Amendment No. 4 for a one-year pilot[9]

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved the Linkage Plan, which was initially proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, January 29, 2003, June 18, 2003, January 29, 2004, June 15, 2004, June 17, 2004, July 2, 2004, and October 19, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003); 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004); 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004); 49885 (June 17, 2004), 69 FR 35397 (June 24, 2004); 49969 (July 2, 2004), 69 FR 41863 (July 12, 2004); and 50561 (October 19, 2004), 69 FR 62920 (October 28, 2004).

[4] *See* Securities Exchange Act Release No. 51108, 70 FR 6471 (February 7, 2005).

[5] A "Trade Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer. *See* Section 2(29) of the Linkage Plan.

[6] A "Satisfaction Order" is defined as an order sent through the Intermarket Option Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[7] *See* Securities Exchange Act Release Nos. 47028 (December 18, 2002), 67 FR 79171 (December 27, 2002) (Notice of Proposed Joint Amendment No. 4).

[8] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

[9] *See* Securities Exchange Act Release Nos. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003)

to give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for Trade-Throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for Trade-Throughs near the end of the trading day leads to an increase in the number of Trade-Throughs.

In the order approving Joint Amendment No. 4, the Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval ("Report").[10] The Commission specified that the Report should include information about the number and size of Trade-Throughs that occur during the last seven minutes of the equity options trading day and during the remainder of the trading day, the number and size of Satisfaction Orders that Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the Participants use the underlying market to hedge their options positions.[11] In a subsequent amendment to the Linkage Plan for the purpose of extending the pilot, Joint Amendment No. 8, the Participants represented that if they were to seek to make the limitation on Trade-Through liability permanent, they would submit the Report to the Commission no later than March 31, 2004.[12]

Following the extension of the pilot program pursuant to Joint Amendment No. 8, certain Participants provided the Commission with portions of the data required in the Report, but were unable to provide sufficient information to enable the Commission to evaluate whether permanent approval would be appropriate. The Commission extended the pilot program until January 31, 2005, to allow the limitation to continue in effect, with an increase in liability to 25 contracts per Satisfaction Order, to enable the Participants to continue to gather and the Commission to evaluate the data relating to the effect of the operation of the pilot program.[13]

Since the extension of the pilot program pursuant to Joint Amendment No. 12, the Participants have provided no additional data to the Commission to justify permanent approval of the limitation on liability. The Participants have represented that they are currently considering amendments to the Linkage Plan that, if proposed and approved, could obviate the need for the limitation on liability for Trade-Throughs at the end of the trading day. Specifically, the amendments the Participants are considering are intended to minimize the incidence of Trade-Throughs, and subsequently decrease the incidence of Satisfaction Orders. The Participants have represented that these amendments could be in effect within a year, and at that time, Participants would either allow the pilot program to lapse, or, if they believed that a continuation of the limitation was appropriate, would discuss that matter with the Commission staff. In this regard, the Commission notes that the Participants must submit sufficient information to enable the Commission to evaluate whether permanent approval of the pilot program would be appropriate no later than 60 days prior to seeking permanent approval before the Commission will consider such permanent approval.

The Commission previously determined, pursuant to Rule 11Aa3–2(c)(4) under the Act,[14] to put into effect summarily on a temporary basis not to exceed 120 days, the amendments detailed above in Joint Amendment No. 14. After careful consideration of Joint Amendment No. 14, the Commission finds that approving Joint Amendment No. 14 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 14 is consistent with Section 11A of the Act[15] and Rule 11Aa3–2 thereunder,[16] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that extending the pilot program and raising the limitation on liability to 50 contracts per Satisfaction Order will afford the Participants the opportunity to either gather sufficient information to justify the need for the pilot program or determine that the limitation on Trade-Through liability is no longer necessary. The Commission believes that raising the limitation on liability to 50 contracts per Satisfaction Order will increase the average size of Satisfaction Order fills during the end of the options trading day, thereby enhancing customer order protection.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[17] and Rule 11Aa3–2 thereunder,[18] that Joint Amendment No. 14, which extends the pilot program until January 31, 2006, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2673 Filed 5–25–05; 8:45 am]

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(Temporary effectiveness of pilot program on a 120-day basis); and 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot program, until June 30, 2004 and January 31, 2005, respectively. *See* Securities Exchange Act Release Nos. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8); and 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004) (Order approving Joint Amendment No. 12).

[10] *See* Order approving Joint Amendment No. 4, *supra* note 9.

[11] *Id.*

[12] *See* Order approving Joint Amendment No. 8, *supra* note 9.

[13] *See* Order approving Joint Amendment No. 12, *supra* note 9.

[14] 17 CFR 240.11Aa3–2(c)(4).

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 240.11Aa3–2.

[17] 15 U.S.C. 78k–1.

[18] 17 CFR 240.11Aa3–2.

[19] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51716; File No. SR–OPRA–2005–01]

Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Clarify How the Requirements of the OPRA Plan Pertaining to Vendors Apply to Persons Who Redistribute OPRA Data Over the Internet

May 19, 2005.

On March 30, 2005, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[3] The

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant

Continued

proposed amendment would issue a written policy that clarifies how the requirements of the OPRA Plan pertaining to vendors apply to persons who redistribute OPRA data over the Internet. Notice of the proposal was published in the **Federal Register** on April 15, 2005.[4] The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

The OPRA Plan generally defines a "vendor" as a person who redistributes OPRA data (*i.e.*, options last sale and quotation reports and related information) to persons outside of its own organization. Persons who act as vendors are required to enter into vendor agreements with OPRA and pay applicable access and redistribution fees. The purpose of the proposed Plan amendment is to adopt a written policy codifying prior interpretations concerning how provisions of the Plan applicable to "vendors" apply to persons who redistribute OPRA data by means of the Internet.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[5] The Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act[6] and Rule 11Aa3–2 thereunder[7] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. Specifically, given the increasing use of the Internet as a means of providing OPRA data to subscribers and others, the Commission finds that it is appropriate to clarify exactly who among the various types of service providers involved in Internet transmission of OPRA data are considered to be performing the function of a vendor under the OPRA Plan, and therefore subject to those provisions of the OPRA Plan applicable to vendors.

It is therefore ordered, pursuant to Section 11A of the Act,[8] and Rule 11Aa3–2 thereunder,[9] that the proposed OPRA Plan amendment (SR–OPRA–2005–01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2656 Filed 5–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27972]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 20, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 14, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 14, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CenterPoint Energy, Inc., et al. (70–10299)

CenterPoint Energy, Inc. ("CNP"), a registered holding company, of 1111 Louisiana, Houston, TX 77002; Utility Holding, LLC ("Utility Holding"), a direct subsidiary of CNP and also a registered holding company, of 1011 Centre Road, Suite 324, Wilmington, DE 19805; their public utility subsidiaries, CenterPoint Energy Houston Electric ("CEHE") and CenterPoint Energy Resources Corp. ("CERC") (together, "Utility Subsidiaries"), both of 1111 Louisiana, Houston, TX 77002; and certain of the non-utility subsidiaries ("Non-Utility Subsidiaries"),[1] all of 1111 Louisiana, Houston, TX 77002 (collectively, the "Applicants" or "CNP System") have filed an application-declaration ("Application") under Sections 6(a), 7, 9(a), 10 and 12(b), (c) and (f) of the Act and Rules 42, 43, 44, 45, 46, 53 and 54 under the Act.

Background

CNP is a registered holding company that was formed in 2002.[2] CNP indirectly owns all of its subsidiaries through its direct, wholly-owned subsidiary, Utility Holding. Utility Holding is an intermediate registered holding company formed to minimize tax inefficiencies, and it serves merely as a conduit. Utility Holding holds, directly and indirectly, all of the CNP subsidiaries, including the Utility Subsidiaries.[3]

The electric Utility Subsidiary, CEHE, is engaged in the transmission and distribution of electric energy in a 5,000-square-mile area of the Texas Gulf Coast that includes Houston. The natural gas Utility Subsidiary, CERC, owns gas distribution systems. Through

exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[4] *See* Securities Exchange Act Release No. 51514 (April 8, 2005), 70 FR 19976.

[5] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 240.11Aa3–2.

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 240.11Aa3–2.

[10] 17 CFR 200.30–3(29).

[1] CenterPoint Energy Service Company, LLC; CenterPoint Energy Funding Company; CenterPoint Energy Transition Bond Company, LLC; CenterPoint Energy Transition Bond Company II, LLC; Houston Industries FinanceCo GP, LLC; CenterPoint Energy Investment Management, Inc.; CenterPoint Energy Properties, Inc.; Arkansas Louisiana Finance Corporation; Arkla Industries Inc.; CenterPoint Energy Alternative Fuels, Inc.; CenterPoint Energy Field Services, Inc.; CenterPoint Energy Gas Receivables, LLC; CenterPoint Energy Gas Transmission Company; CenterPoint Energy—Illinois Gas Transmission Company; CenterPoint Energy Intrastate Holdings, LLC; Pine Pipeline Acquisition Company, LLC; CenterPoint Energy Gas Services, Inc.; CenterPoint Energy—Mississippi River Transmission Corporation; CenterPoint Energy MRT Services Company; CenterPoint Energy Pipeline Services, Inc.; CenterPoint Energy OQ, LLC; CenterPoint Energy Intrastate Pipelines, Inc.; Minnesota Intrastate Pipeline Company; NorAm Financing I; HL&P Capital Trust II; CenterPoint Energy Funds Management, Inc.; CenterPoint Energy International, Inc.; CenterPoint Energy Avco Holdings, LLC; and CenterPoint Energy Offshore Management Services, LLC.

[2] *See Reliant Energy, Inc.*, HCAR No. 27548 (July 5, 2002) (CNP was referred to there as "New REI").

[3] As used herein, the defined-term "Subsidiaries" refers to the Applicants (other than CNP and Utility Holding), as well as any direct or indirect subsidiary companies that CNP may form with the approval of the Commission or in reliance on rules or statutory exemptions.

unincorporated divisions, CERC provides retail natural gas distribution services in Louisiana, Mississippi, Texas, Arkansas, Oklahoma and Minnesota. Through wholly owned subsidiaries, CERC owns two interstate natural gas pipelines and gas gathering systems, provides various ancillary services and offers natural gas supplies to commercial and industrial customers and natural gas distributors.

In addition to the gas pipeline and gathering subsidiaries discussed above, CNP has Non-Utility Subsidiaries engaged in, among other things, financing activities, real estate and energy and gas-related activities.[4]

Requested Authorization

A. Summary of Transactions

Applicants request authority to engage in the transactions set forth below during the period from the effective date of the order to be issued in this filing through the period ending June 30, 2008 ("Authorization Period").[5] Applicants request authority to engage in these transactions through September 30, 2006, and ask the Commission to reserve jurisdiction over transactions during the remainder of the Authorization Period, pending completion of the record. Applicants state that, based on their business plans and the current conditions in the financial markets, they anticipate that the "Current Authority" requested in their Application will be used during the Authorization Period primarily to refinance currently outstanding debt obligations and to meet ongoing operational needs of their respective businesses.[6] In summary, Applicants request:

(i) CNP requests authorization for: (a) Securities issuances, (b) guarantees and other forms of credit support, as well as performance guarantees ("Guarantees"), and (c) hedging transactions;

(ii) With respect to its Subsidiaries, CNP requests such authorization as may be required for issuances of securities, Guarantees, and hedging transactions;

(iii) CNP requests that the Commission approve the continuation of a CNP Group Money Pool (the "Money Pool");

(iv) CNP and its Subsidiaries request that the Commission approve the continuation of existing financing arrangements, Guarantees and hedging arrangements, as well as any transactions undertaken to extend the terms of or replace, refund or refinance existing obligations and the issuance of new obligations in exchange for existing obligations, provided in each case that the issuing entity's "Consolidated Capitalization"[7] is not increased as a result of such financing transaction;

(v) CNP further requests authority to issue or sell external debt securities, preferred stock, preferred securities (including trust preferred securities) and equity-linked securities in an aggregate amount (including the outstanding securities referenced in (iv) above) not to exceed $4.334 billion at any one time outstanding during the Authorization Period, with a request that the Commission reserve jurisdiction over $500 million of the requested authority;[8]

(vi) CNP requests authority to issue or sell an additional 200 million shares of common stock or options, warrants or other rights to purchase an equivalent number of shares of common stock (and to issue or deliver common stock upon the exercise of such options, warrants or other rights) and to issue one Right (as defined below) in connection with each share of common stock and to issue securities in connection with such Right, in the event such Right is exercised;

(vii) CEHE requests authority to issue or sell external debt securities, preferred stock and preferred securities (including trust preferred securities) in an aggregate amount (including the outstanding securities referenced in (iv) above) not to exceed $4.280 billion at any one time outstanding during the Authorization Period, with a request that the Commission reserve jurisdiction over $500 million of the requested authority;

(viii) CERC requests authority to issue or sell external debt securities, preferred stock and preferred securities (including trust preferred securities) in an aggregate amount (including the outstanding securities referenced in (iv) above) not to exceed $3.256 billion at any one time during the Authorization Period, with a request that the Commission reserve jurisdiction over $500 million of the requested authority;

(ix) The Subsidiaries may also finance their capital needs through borrowings from CNP, directly or indirectly through Utility Holding, and Utility Holding requests authority to issue and sell securities to its parent company, CNP, and to acquire securities from its subsidiary companies;

(x) CNP requests that the Commission approve the issuance by CNP and its Subsidiaries of nonexempt Guarantees in an amount such that the total amount of nonexempt Guarantees issued by CNP and its Subsidiaries, in the aggregate, does not exceed $4 billion outstanding at any time during the Authorization Period (the "CNP System Guarantee Limit");

(xi) CNP and the Non-Utility Subsidiaries request authority for the declaration and payment of dividends out of capital or unearned surplus;

(xii) CNP requests authority to form and capitalize financing entities (including special purpose subsidiaries) (each a "Financing Subsidiary") in connection with the issuance of securities as requested in the Application as well as authority for the financing entities to issue such securities and to transfer the proceeds of any financing to their respective parent companies;

(xiii) CNP also requests continued authority for the Non-Utility Subsidiaries to restructure their duly authorized businesses from time to time; and

(xiv) CNP and its Subsidiaries request authority during the Authorization period in an aggregate amount of up to $5 million for "Inactive Subsidiaries."[9]

B. Parameters for Financing Authority

Applicants request authorization to engage in certain financing transactions during the Authorization Period for which the specific terms and conditions are not at this time known, and which may not be covered by Rule 52 under the Act, without further prior approval by the Commission. The following general terms will be applicable where appropriate to the financing transactions requested to be authorized in the Application:

(1) *Effective Cost of Money.* The effective cost of capital for long-term

[4] CNP's Utility and Non-Utility Subsidiaries in existence as of March 31, 2005 (except Utility Holding and including non-applicant subsidiaries) are further described in Ex. K–1 to the Application.

[5] CNP's current financing authority expires June 30, 2005. *See CNP*, HCAR No. 27692 (June 30, 2003) (the "2003 Omnibus Financing Order").

[6] "Current Authority" is the total amount of securities that are outstanding or could be outstanding (in the case of credit facilities that are not fully drawn) under the 2003 Omnibus Financing Order. The amounts, as set forth in the first column of Ex. G–1 to the Application, are as follows: CNP: $3.834 billion; CEHE: $3.780 billion; CERC: $2.756.

[7] "Consolidated Capitalization" is defined to include, where applicable, all common-stock equity (comprised of common stock, additional paid-in-capital, retained earnings, treasury stock and/or other comprehensive income or loss), preferred stock, preferred securities, equity-linked securities, long-term debt, short-term debt, current maturities and/or minority interests.

[8] For purposes of the Application, the term "external" financing refers to a transaction in which securities are issued and sold to an entity that is not a member of the CNP System. Each of CNP, CEHE and CERC is requesting authority on a corporate, rather than a consolidated, basis. Utility Holding is not seeking authority to issue and sell external debt or equity securities.

[9] CNP's "Inactive Subsidiaries," as listed on Ex. L–1 to the Application, are: CenterPoint Energy Retail Interests, Inc.; Entex Gas Marketing Company; Entex, NGV, Inc.; Entex Oil & Gas Company; Allied Materials Corporation; National Furnace Company; CenterPoint Energy Consumer Group, Inc.; NorAm Utility Services, Inc.; Arkla Products Company; ALG Gas Supply Company; Intex, Inc.; United Gas, Inc.; CenterPoint Energy Trading and Transportation Group, Inc.; CenterPoint Energy MRT Holdings, Inc.; CenterPoint Energy Field Services Holdings, Inc.; CenterPoint Energy Gas Processing, Inc.; CenterPoint Energy Hub Services, Inc.; HL&P Capital Trust I; REI Trust I; CenterPoint Energy Tegco, Inc.; Block 368 GP, LLC; Block 368, LP; CenterPoint Energy Power Systems, Inc.; CenterPoint Energy Products, Inc.; NorAm Energy, Corp.; Utility Rail Services, Inc.; CenterPoint Energy, Inc. (a Delaware company); CenterPoint Energy Light, Inc.; Reliant Energy Brasil, Ltda.; Reliant Energy Brazil Tiete Ltd.; Reliant Energy Brazil Ltd.; Reliant Energy Internâtional Brasil Ltda.; HIE Brasil Rio Sul Ltda.; CenterPoint Energy International Services, Inc.; Reliant Energy Columbia Ltda.; Reliant Energy El Salvador S.A. de C.V.; Reliant Energy Outsource Ltd.; Venus Generation El Salvador; CenterPoint Energy International Holdings, LLC; Worldwide Electric Holdings B.V.; CenterPoint Energy International II, Inc.; HIE Ford Heights, Inc.; and HIE Fulton, Inc.

debt, short-term debt, preferred securities and equity-linked securities will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on (i) any long-term debt securities exceed 500 basis points over comparable term U.S. Treasury securities; or (ii) any short-term debt securities exceed 300 basis points over the comparable-term London Interbank Offered Rate ("LIBOR"). The dividend rate on any series of preferred stock or preferred or equity-linked securities will not exceed (at the time of issuance) 700 basis points over comparable term U.S. Treasury securities.

(2) *Maturity.* The final maturity of long-term indebtedness will not exceed 50 years. All series of preferred stock, preferred securities and equity-linked securities will be required to be redeemed no later than 50 years after issuance, except for preferred stock or preferred securities that are perpetual in duration.

(3) *Issuance Expenses.* The underwriting fees, commissions or other similar remuneration paid in connection with the issue, sale or distribution of securities pursuant to the Application will not exceed the competitive market rates that are consistent with similar securities of comparable credit quality and maturities issued by other companies; provided that in no event will such fees and commissions exceed seven percent (7%) of the principal or face amount of the securities being issued or gross proceeds of the financing.[10]

(4) *Use of Proceeds.* The proceeds from the sale of securities in external financing transactions approved herein will be used for general corporate purposes including (i) the financing, in part, of the capital expenditures of the CNP System, (ii) the financing of working capital requirements of the CNP System, (iii) the repayment and/or refinancing of debt; (iv) the acquisition, retirement, or redemption of securities previously issued by the issuing party, (v) direct or indirect investment in companies authorized under the Act, as discussed herein, and (vi) other lawful purposes. The Applicants represent that no such financing proceeds will be used to acquire a new Rule 58 Subsidiary unless such transaction is consummated in accordance with an order of the Commission or an available exemption under the Act.

The Applicants submit to a reservation of jurisdiction over use of such financing proceeds to invest in one or more new lines of business, that is, any line of business other than those utility and non-utility businesses in which CNP and its Subsidiaries are currently engaged, as described on Exhibit K–1 to the Application.

CNP requests a reservation of jurisdiction over any investment by CNP or any of its Subsidiaries in any new energy- or gas-related companies within the meaning of Rule 58 ("Rule 58 Companies") at any time CNP's ratio of common equity to total capitalization (net of securitization obligations) is less than 30%; provided, however, that CNP may increase its investment in an existing Rule 58 Company to the extent necessary to complete any project or desirable to preserve or enhance the value of CNP's investment in the company.

(5) *Common Equity Ratio.* Net of securitization debt, CNP's projected equity capitalization will be 30% or more of its Consolidated Capitalization (defined above) by the end of the Authorization Period. In connection with the requested authority, CNP is undertaking to provide the Commission on a quarterly basis confidential exhibits updating CNP's financial projections and assumptions through 2008.

Applicants represent that, from the date of their formation until the date hereof, each of CERC and CEHE has maintained common equity of at least 30% of its Consolidated Capitalization.

At all times during the Authorization Period, CERC will maintain common equity of at least 30% of its Consolidated Capitalization.

In carrying out the Texas Commission's Financing Order, CEHE's consolidated member's equity ratio is projected to decrease below the Commission's target of 30% of Consolidated Capitalization during part of the period that the Transition Bonds are outstanding, if the securitization debt is included. The decrease in CEHE's consolidated member's equity ratio below 30% is due to the Transition Bonds being shown as debt in the consolidated financial statements of CEHE. The Transition Bonds will be non-recourse to CEHE and will be serviced by the cash flows from the transition charges imposed under the Financing Order, not the revenues of CEHE's utility operations. Excluding the Transition Bonds from the consolidated pro forma capital structure of CEHE, the member's equity ratio would be least 30% of its Consolidated Capitalization at all times during the Authorization Period.[11]

Other than with respect to the Money Pool, Applicants submit to a reservation of jurisdiction over all authority granted in an order in this filing during any portion of the Authorization Period when: (1) The common equity ratio of CNP (net of securitization debt), on a consolidated basis, falls below its common equity ratio as of March 31, 2005;[12] (2) the member's equity ratio of CEHE, on a consolidated basis (net of securitization debt) falls below 30% of Consolidated Capitalization; or (3) the common equity ratio of CERC, on a consolidated basis, falls below 30%.

(6) *Investment Grade Ratings.* Apart from common stock, member interests or securities issued for the purpose of funding the operations of subsidiaries through the Money Pool, no guarantees or other securities may be issued in reliance on the authority requested in the Application unless:[13] (i) The security to be issued, if rated, is rated investment grade by at least one nationally recognized statistical rating organization as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934 ("NRSRO"); (ii) all outstanding rated securities of the issuer are rated investment grade by at least one NRSRO; and (iii) all outstanding rated securities of CNP are rated investment grade by at least one NRSRO.

(7) *Authorization Period.* No security will be issued pursuant to the authority sought in the Application after the last day of the Authorization Period (which is June 30, 2008), provided, however, that securities issuable or deliverable upon exercise or conversion of, or in exchange for, securities issued on or before June 30, 2008 in accordance with the terms of such authorization may be issued or delivered after such date.

[10] Issuance Expenses will not count toward the Effective Cost of Money, discussed above.

[11] Following issuance of the Transition Bonds, CEHE is expected to have member's equity capitalization of slightly less than 30% of Consolidated Capitalization if the securitization debt is included. CEHE will improve its equity ratio as securitization obligations are paid down. It is anticipated that CEHE will reach a level of at least 30% of Consolidated Capitalization by 2009.

[12] Based on CNP's Quarterly Report on Form 10–Q for the quarter ended March 30, 2005, CNP's common equity represented 11.4% of its Consolidated Capitalization (excluding securitization debt).

[13] Applicants ask the Commission to reserve jurisdiction over the issuance of securities subject to the Investment Grade Ratings criteria where one or more of the Investment Grade Ratings criteria are not met. As noted previously, Utility Holding is not seeking authority to issue external debt or equity securities.

C. Description of Specific Types of Financing

(1) *CNP External Financing*

CNP requests authority to issue and sell securities including common stock, preferred stock and preferred and equity-linked securities (either directly or through a subsidiary), warrants, long-term and short-term debt securities and convertible securities and derivative instruments.[14] CNP also requests authorization to enter into obligations with respect to tax-exempt debt issued on behalf of CNP by governmental authorities. Such obligations may relate to the refunding of outstanding tax-exempt debt or to the remarketing of tax-exempt debt. CNP seeks authorization to enter into lease arrangements, and certain hedging transactions in connection with the foregoing issuances of taxable or tax-exempt securities. Applicants state that, based on their business plans and the current conditions in the financial markets, they anticipate that the Current Authority (defined above) requested in their Application will be used during the Authorization Period primarily to refinance currently outstanding debt obligations and to meet ongoing operational needs of their respective businesses. The Current Authority for CNP is $3.834 billion.

CNP may sell securities covered by the Application in any one of the following ways: (i) Through underwriters; (ii) to initial purchasers in transactions in reliance on Rule 144A under the Securities Act of 1933 or dealers; (iii) through agents; (iv) directly to a limited number of purchasers or a single purchaser; (v) in exchange for already outstanding securities, including tender offers; or (vi) directly to employees (or to trusts established for their benefit), shareholders and others. If underwriters are used in the sale of the securities, such securities may be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by CNP) or directly by one or more underwriters acting alone. The securities may be sold directly by CNP or through agents designated by CNP from time to time. If common or preferred stock or convertible debt is being sold in an underwritten offering, CNP may grant the underwriters thereof a "green shoe" option permitting the purchase from CNP at the same price of additional shares or debt then being offered solely for the purpose of covering over-allotments.

Sales may be registered under the Securities Act of 1933 or effected through competitive bidding among underwriters. In addition, sales may be made through private placements, sales to initial purchasers in Rule 144A transactions or other non-public offerings to one or more persons. All such sales will be upon terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

(a) Common Stock

CNP is authorized under its restated articles of incorporation to issue one billion shares of common stock, par value $.01 per share, and related preferred stock purchase rights. Each share of common stock includes one right ("Right") to purchase from CNP a unit consisting of one one-thousandth of a share of CNP Series A Preferred Stock at a purchase price of $42.50 per unit, subject to adjustment under specified circumstances, as described in Exhibit I–1. The Rights are issued pursuant to the Rights Agreement dated as of January 1, 2002 between CNP and JPMorgan Chase Bank (the "Rights Agreement"), a copy of which was filed with CNP's Annual Report on Form 10–K for the year ended December 31, 2001 (File No. 1–31447) and incorporated by reference.[15] As of February 28, 2005, CNP had 308,501,031 shares of common stock outstanding. CNP seeks authority to issue 200 million additional shares of common stock (including Rights) and to issue warrants, options and other rights to acquire an equivalent amount of common stock, and to buy and sell derivative securities to hedge these transactions. CNP will not engage in speculative transactions.

Such issuances may be used for the general corporate purposes described above in the "Use of Proceeds" section. In addition, CNP proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, shares of CNP common stock for allocation under incentive compensation plans and other equity compensation and employee benefit plans, and for the CenterPoint Investor's Choice Plan.[16] Such transactions would comply with applicable law and Commission interpretations then in effect. The requested authority to issue or deliver CNP common stock under these plans includes the authority to issue related options, warrants, stock appreciation rights, stock units, time-based restricted stock, performance awards and other securities pursuant to those plans. Any newly issued shares of common stock, including shares of common stock issued upon the conversion or exercise of warrants, convertible debt or other equity-linked securities, will be counted toward the overall limit on common stock; shares of common stock purchased in the open market or otherwise acquired for the purpose of reissuance under Stock Based Plans will not be counted toward this limit to the extent that the net effect of the purchase and reissuance does not increase the number of shares of common stock outstanding.

CNP may also issue common stock as consideration, in whole or in part, for acquisitions of securities or businesses

[14] Any convertible or equity-linked securities or warrants would be convertible into or linked only to securities that CNP and its Subsidiaries are otherwise authorized to issue pursuant to rule or Commission order and will count against the authorized limits for those securities granted pursuant to the authority sought in the Application.

[15] The Rights will become exercisable shortly after (i) any public announcement that a person or group of associated persons has acquired, or obtained the right to acquire, beneficial ownership of 20% or more of the outstanding shares of CNP common stock; or (ii) the start of a tender or exchange offer that would result in a person or group of associated persons becoming a 20% owner. The Rights are also exercisable for shares of (i) CNP common stock in the event of certain tender or exchange offers not approved by the CNP board; and (ii) the common stock of an acquiring company in the event of certain mergers, business combinations, or substantial sales or transfers of assets or earning power. Under certain circumstances, CNP may substitute cash, property, other equity securities or debt, or may reduce the exercise price of the Rights. The Rights attach to all certificates representing the outstanding shares of common stock and are transferable only with such certificates. The Rights are redeemable at CNP's option prior to their becoming exercisable and expire on December 31, 2011.

CNP seeks continued authority to continue to implement the Rights Agreement, including the authority to issue shares of CNP Series A Preferred Stock or CNP common stock, or to provide other consideration issued upon exercise of the Rights. Such securities issuances will not be counted against the external financing limits requested in this filing.

[16] CNP's existing stock-related employee plans are: CenterPoint Energy, Inc. Savings Plan; CenterPoint Energy, Inc. 1994 Long-Term Incentive Compensation Plan; Long-Term Incentive Plan of CenterPoint Energy, Inc.; CenterPoint Energy, Inc. and Subsidiaries Common Stock Participation Plan for Designated New Employees and Non-Officer Employees; NorAm Energy Corp. 1994 Incentive Equity Plan; and CenterPoint Energy, Inc. Stock Plan for Outside Directors (collectively, the "Stock Based Plans"). The requested authority relating to benefit and compensation plans is intended to apply to these plans, as they may be amended or supplemented from time to time, and similar plans or arrangements that may be adopted in the future without any additional prior Commission order.

or assets where such acquisition is otherwise authorized under the Act.

(b) External Debt, Preferred Stock, Preferred and Equity-Linked Securities

CNP requests Commission authorization during the Authorization Period to issue debt securities and preferred stock, and to issue directly or indirectly through one or more Financing Subsidiaries long-term debt securities, preferred stock, preferred securities (including, trust preferred securities), and equity-linked securities (including preferred stock, preferred securities that are convertible, either mandatorily or at the option of the holder, into common stock, or forward purchase contracts for common stock).

Long-term debt securities may be comprised of bonds, notes, medium-term notes or debentures under one or more indentures, long-term indebtedness under agreements with banks or other institutional lenders, directly or indirectly, and convertible debt.[17] Long-term securities could also include obligations relating to the refunding or remarketing of tax-exempt debt issued on behalf of CNP or its Subsidiaries by governmental authorities.

Long-term debt issued pursuant to the requested authority will be unsecured.[18] Specific terms of any borrowings may include one or more revolving credit facilities, and will also continue to be determined by CNP at the time of issuance. Any borrowings will comply in all regards with the parameters on financing authorization set forth above.

Short-term debt issued by CNP will be unsecured. Types of short-term debt securities may include borrowings under one or more bank loans, commercial paper, short-term notes, bid notes, institutional borrowings, and privately placed notes. Specific terms of any short-term borrowings will be determined by CNP at the time of issuance and will comply with the parameters for financing authorization set forth above. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under generally accepted accounting principles ("GAAP").

CNP may sell commercial paper or privately placed notes ("commercial paper"), from time to time, in established domestic or European commercial paper markets. Such commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company. CNP may, without counting against the limit on parent financings set forth above, maintain back-up lines of credit in connection with one or more commercial paper programs in an aggregate amount not to exceed the amount of authorized commercial paper.

CNP may sell shares of preferred stock with terms of each series as may be designated in the instrument creating each such series. Shares of preferred stock may be convertible or exchangeable into CNP common stock, provided that preferred stock will be convertible only into such common stock as is otherwise authorized under the Act.

CNP may sell short-term notes through one or more private placements or public offerings primarily to traditional money market investors. CNP may enter into individual agreements with one or more commercial banks that may or may not be lenders under CNP credit facilities. These agreements would permit CNP to negotiate with one or more banks on any given day for such lender, or any affiliate or subsidiary of such lender, to purchase promissory notes directly from CNP.

Equity-linked securities issued by CNP will be exercisable or exchangeable for or convertible, either mandatorily or at the option of the holder, into common stock or indebtedness or allow the holder to surrender to the issuer or apply the value of a security issued by CNP, as approved by the Commission, to such holder's obligation to make a payment on another security of CNP issued as permitted by the Commission. Any convertible or equity-linked securities will be convertible into or linked to common stock, preferred securities or unsecured debt that CNP is otherwise authorized to issue by Commission order directly, or indirectly through Financing Subsidiaries on behalf of CNP.

Preferred stock and equity-linked securities may be sold directly or indirectly to or through underwriters, initial purchasers or dealers or pursuant to any other method of distribution as described for common stock, above.

(c) Risk Management Devices

CNP requests authority to enter into hedging arrangements intended to reduce or manage interest rate risks. These arrangements may include, but are not limited to interest rate swaps, caps, floors, collars, forward agreements, issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency (*e.g.*, Fannie Mae) obligations or LIBOR based swap instruments (collectively referred to as "Hedging Instruments"). The transactions would be for fixed periods and stated notional amounts as generally accepted as prudent in the capital markets. In no case will the notional principal amount of any interest rate hedge exceed that of the underlying debt instrument. CNP will not engage in "speculative transactions" as that term is described in Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities"). Transaction fees, commissions and other amounts payable to brokers in connection with an interest rate hedge will not exceed those generally obtainable in capital markets for parties of comparable credit quality. CNP may employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued pursuant to this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, (iii) limiting the impact of changes in interest rates resulting from variable rate debt and (iv) managing other risks that may attend outstanding securities. Transactions will be entered into for a fixed or determinable period. CNP will only enter into agreements with counterparties having a senior debt rating at the time the transaction is executed of at least "BBB-" or its equivalent, as published by a NRSRO ("Approved Counterparties").

In addition, CNP requests authorization to enter into hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to the limitations and restrictions expressed below. Such Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the risk associated with any issuance of securities through appropriate means, including (i) a forward sale of exchange-traded Hedging Instruments, (ii) the purchase of put options on Hedging Instruments,

[17] Debt will be convertible only into such securities as are otherwise authorized under the Act.

[18] Currently, certain pollution control bonds outstanding at CNP are secured by mortgage bond obligations of CEHE.

(iii) a put options purchase in combination with the sale of call options Hedging Instruments, (iv) some combination of the above and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges, and (v) other financial derivatives or other products including Treasury rate locks, swaps, forward starting swaps, and options on the foregoing. Anticipatory Hedges may be executed on-exchange with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties, or a combination of the two. CNP will determine the structure of each Anticipatory Hedge transaction at the time of execution. CNP may decide to lock in interest rates and/or limit its exposure to interest rate increases.

Each Hedging Instrument and Anticipatory Hedge will be treated for accounting purposes as provided for under GAAP. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with Hedging Instruments will not exceed those generally obtainable in competitive markets for similarly-situated parties of comparable credit quality. CNP will comply with SFAS 133 and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or such other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

(2) *Subsidiary Financing*

The Utility Subsidiaries and the Non-Utility Subsidiaries, to the extent not exempted pursuant to Rule 52, request authority to issue and sell securities, including preferred stock, preferred securities (including trust preferred securities) (either directly or through a subsidiary), and long-term and short-term debt securities (including convertible debt, commercial paper and privately placed short-term notes) on the same terms and conditions discussed above for CNP, except that Subsidiary debt may be secured or unsecured, and Utility Subsidiary debt will be subject to the limits on aggregate amounts of securities outstanding in the applicable categories as set forth on Exhibit G–1 to the Application.[19]

The Utility Subsidiaries also request authorization to enter into obligations with respect to new tax-exempt debt issued on behalf of a Utility Subsidiary by governmental authorities as well as obligations entered into in connection with the refunding of outstanding tax-exempt debt assumed by CNP in connection with the August 31, 2002 restructuring by which CNP and Utility Holding became holding companies for the Utility Subsidiaries. The Utility Subsidiaries and the Non-Utility Subsidiaries, to the extent not exempted pursuant to Rule 52, also request authority to enter into hedging transactions intended to reduce or manage interest rate risks in connection with the foregoing issuance of securities, subject to the limitations and requirements applicable to CNP. Based on their business plans and the current condition in the financial markets, Applicants anticipate that the Current Authority (defined above) sought in this Application will be used during the Authorization Period primarily to refinance currently outstanding debt obligations and to meet ongoing operational needs of their respective businesses.

(3) Guarantees and Intra-System Advances

(a) Guarantees

Authorization is requested for CNP and its Subsidiaries during the Authorization Period to enter into guarantees on their own behalf and on behalf of their respective Subsidiaries to third parties, obtain letters of credit, enter into support or expense agreements or liquidity support agreements or otherwise provide credit support with respect to the obligations of the Subsidiaries, including performance guarantees, as may be appropriate to carry on in the ordinary course of CNP or its Subsidiaries' duly-authorized utility and related businesses, and the Subsidiaries request authority to provide to their respective Subsidiaries guarantees and other forms of credit support such that in the aggregate, CNP and its Subsidiaries will not enter into guarantees in an amount exceeding the CNP System Guarantee Limit.[20] Excluded from the CNP System Guarantee Limit are obligations exempt pursuant to Rule 45 under the Act.

CNP currently has a number of types of guarantees in effect. Among other things, it has issued guarantees with respect to payment obligations of certain of its Subsidiaries, both to counterparties and, in some cases, to regulatory authorities where required under applicable laws; entered into indemnification agreements to support the issuance of surety bonds on behalf of itself and its Subsidiaries; entered into agreements to guarantee certain amounts related to the issuance of securities by certain Subsidiaries and to guarantee certain other Subsidiary expenses and liabilities. In addition, CERC has guaranteed the office space lease of one of its subsidiaries.

Certain of the guarantees may be in support of obligations that are not capable of exact quantification. In such cases, CNP will determine the exposure under a guarantee for purposes of measuring compliance with the CNP System Guarantee Limit by appropriate means, including estimation of exposure based on loss experience or potential payment amounts. As appropriate, these estimates will be made in accordance with GAAP and sound financial practices. Such estimation will be reevaluated periodically.

The guarantor may charge each Subsidiary a fee for any guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

The amount of any guarantees will be counted toward the applicable limits under Rules 53 and 58.

(b) Money Pool

The "Participants" request authorization to continue to conduct the Money Pool, as approved in the 2003 Omnibus Financing Order (HCAR No. 27962 (June 30, 2003)).[21] To the extent not exempted by Rule 52 under the Act, the Participants (other than CNP) also request authorization to make, from

[19] To the extent CEHE issues secured debt, the debt will be secured by assets or securities owned by CEHE. To the extent CERC issues secured debt, such debt will be secured by a pledge of the stock of its nonutility subsidiary companies. CERC currently does not have outstanding secured debt. To the extent a Non-Utility Subsidiary issue secured debt, the debt will be secured by assets or securities owned by that Non-Utility Subsidiary.

[20] The amount of the requested authority (in the aggregate, not to exceed $4 billion outstanding at any time during the Authorization Period) is intended to accommodate situations such as the CNP System's exposure to, among other things, the volatility of natural gas prices.

[21] The participants in the Money Pool will be CNP, CenterPoint Energy Service Company, LLC (the "Service Company"), the Utility Subsidiaries, CenterPoint Energy Properties, Inc. (owner of CNP's office building, parking garage and dispatch facility), CenterPoint Energy Products, Inc. (inactive), and CenterPoint Energy Funding Company (collectively, the "Participants"). CenterPoint Energy Funding Company is an entity through which CNP had funded or acquired foreign utility companies within the meaning of Section 33 of the Act and so, this company will be an investor in but not a borrower from the Money Pool. No exempt wholesale generator, foreign utility company or exempt telecommunications company will be a borrower from the Money Pool.

time to time, unsecured short-term borrowings from the Money Pool and to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool.

CNP requests authorization to contribute surplus funds and to lend and extend credit to the Participants through the Money Pool. CNP will not be a borrower from the Money Pool.

Under the terms of the Money Pool, each Participant determines each day the amount of funds each desires to contribute to the Money Pool, and contributes such funds to the Money Pool.[22] The determination of whether a Participant has funds to contribute and the determination whether a Participant shall lend such funds to the Money Pool is made by such Participant's treasurer, or by a designee thereof, in such Participant's sole discretion.[23] Each Participant may withdraw any of its funds at any time upon notice to the Service Company, as administrative agent of the Money Pool.

Short-term funds will be available from the following sources: (1) Surplus funds in the treasuries of the Participants, and (2) proceeds from external borrowings, including bank loans, the sale of notes and/or the sale of commercial paper by the Participants, in each case to the extent permitted by applicable laws and regulatory orders.

Each borrowing Participant will borrow *pro rata* from each fund source in the same proportion that the amount of funds provided from that fund source bears to the total amount then loaned through the Money Pool. On a day when more than one source of funds is invested in the Money Pool with different rates of interest used to fund loans through the Money Pool, each borrower will borrow *pro rata* from each such funding source from the Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of funds invested into the Money Pool. If there are insufficient funds to meet all borrowing requests, the needs of the Utility Subsidiaries will be met before loans are made to any Non-Utility Subsidiaries.

The Service Company, as administrator of the Money Pool, will provide each Participant with a report for each business day that includes, among other things, cash activity for the day and the balance of loans outstanding. All borrowings from the Money Pool shall be authorized by the borrowing Participant's treasurer, or by a designee thereof. No Participant shall be required to effect a borrowing through the Money Pool if such Participant determines that it can (and is authorized to) effect such borrowing more advantageously directly from banks or through the sale of its own notes or commercial paper.

Funds which are loaned by Participants and are not utilized to satisfy borrowing needs of other Participants will be invested by the Service Company on behalf of the lending Participants in one or more short term instruments, including (i) interest-bearing deposits with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies; (iii) commercial paper rated not less than A–1 by Standard & Poor's and P–1 by Moody's Investors Services, Inc.; (iv) money market funds; (v) bank certificates of deposit; (vi) Eurodollar funds; (vii) repurchase agreements collateralized by securities issued or guaranteed by the U.S. government; and (viii) such other investments as are permitted by Section 9(c) of the Act and Rule 40 under the Act.

The interest rate applicable on any day to then outstanding loans through the Money Pool, whether or not evidenced by a promissory demand note, will be the composite weighted average daily effective cost incurred by CNP for external borrowings outstanding on that date. The daily effective cost shall be inclusive of interest rate swaps related to such external funds. If there are no external borrowings outstanding on that date, then the rate will be the certificate of deposit yield equivalent of the 30-day Federal Reserve "AA" Non-Financial Commercial Paper Composite Rate or if no composite is established for that day, then the applicable rate will be the composite for the next preceding day for which a composite is established. If the composite shall cease to exist, then the rate will be the composite which then most closely resembles the composite and/or most closely mirrors the pricing CNP would expect if it had external borrowings.

Interest income related to external investments will be calculated daily and allocated back to lending Participants on the basis of their relative contribution to the Money Pool on that date.

Each Participant receiving a loan from the Money Pool shall repay the principal amount of such loan, together with all interest accrued thereon, on demand by the administrator and in any event not later than the expiration date of the Commission authorization for the operation of the Money Pool. All loans made through the Money Pool may be prepaid by the borrower without premium or penalty.

Borrowings by the Utility Subsidiaries from the Money Pool should not exceed the following amounts at any one time outstanding during the Authorization Period: .

CEHE—$600 million[24]
CERC—$600 million

(c) Other Intra-System Financing

In addition to external financings and borrowings as described above through the Money Pool, the Subsidiaries may also finance their capital needs through both short-term and long-term borrowings from CNP, directly or indirectly through Utility Holding. Applicants request authorization, consistent with the requirements of Section 12(a) of the Act, to engage in intra-system financings with each other.

Authority is sought for the Utility Subsidiaries to acquire securities from their respective subsidiaries and to issue and sell securities to their respective parents. Any short-term borrowings by Utility Subsidiaries pursuant to this request would be counted toward the Money Pool limits above.

Applicants state that Utility Holding is a subsidiary of CNP and is the direct or indirect parent of all of the Subsidiaries. Applicants state that Utility Holding may have occasion to issue its debt or equity securities to CNP in exchange for funds. Utility Holding could then purchase debt or equity securities of its Subsidiaries with those funds, adding to the capitalization of those Subsidiaries. Applicants state that no such issuance by Utility Holding will increase the CNP system's securities held by third-parties. If CNP obtains funds to purchase such securities from an external source, CNP's issuance of securities will be only as approved by the Commission's order in this docket and subject to the limitations imposed in such order, including the overall financing limitation of $4.334 billion. All securities issuances by a Subsidiary to Utility Holding, will be subject to limitations imposed on that Subsidiary regarding securities issuances and will be within the dollar limitations imposed by the order in this docket, if any.

[22] An Amended and Restated Form of Money Pool Agreement is attached to the Application as Exhibit J–1.

[23] Participants other than Utility Subsidiaries may contribute amounts to the Money Pool from either surplus funds or external borrowings. Utility Subsidiaries will only contribute surplus funds to the Money Pool.

[24] CEHE's external borrowings under the $200 million revolving credit facility authorized in *CNP*, HCAR No. 27949 (Feb. 28, 2005) will be counted toward the Money Pool limits during the Authorization Period.

Consequently, Applicants assert, there is no need to impose a separate dollar limitation on these conduit securities issuances by Utility Holding. Applicants state that the approval sought for Utility Holding is merely to cover the technical requirement that all of its securities issuances be approved, as it is acting as a conduit to invest funds by CNP in the Subsidiaries. Applicants also seek authority for Utility Holding to transfer any financing proceeds received from the Subsidiaries to CNP.

(d) Authority for Inactive Subsidiaries

The Applicants request authority in an aggregate amount of up to $5 million during the Authorization Period to pay, on behalf of the Inactive Subsidiaries (defined above), administrative expenses and dissolution costs; to resolve claims and lawsuits of any Inactive Subsidiary, if any; and to pay any other costs and expenses that any Inactive Subsidiaries may incur from time to time. Applicants request that the Commission reserve jurisdiction over this request.

(4) *Changes in Capital Stock of Majority Owned Subsidiaries*

The portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock or other equity securities to CNP or other immediate parent company during the Authorization Period pursuant to Rule 52 and/or pursuant to an order issued pursuant to this filing cannot be ascertained at this time. It may happen that the proposed sale of capital securities (*i.e.*, common stock or preferred stock) may in some cases exceed the then authorized capital stock of such Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value.

As needed to accommodate such proposed transactions and to provide for future issuances, request is made for authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by CNP or other intermediate parent company; provided that the consents of all other shareholders or other equity holders have been obtained for the proposed change. This request for authorization is limited to CNP's 50% or more owned Subsidiaries and will not affect the aggregate limits or other conditions contained in the Application. A Subsidiary would be able to change the par value, or change between par value and no-par stock, or change the form of such equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. CNP will be subject to all applicable laws regarding the fiduciary duty of fairness of a majority shareholder to minority shareholders in any such 50% or more owned Subsidiary and will undertake to ensure that any change implemented under this paragraph comports with such legal requirements.[25]

(5) *Payment of Dividends Out of Capital or Unearned Surplus*

CNP requests authority to declare and pay dividends out of capital or unearned surplus in an amount up to $300 million during the Authorization Period. CNP requests that the Commission reserve jurisdiction over this request.[26]

Applicants also request a continuation of authority for the Non-Utility Subsidiaries to pay dividends with respect to the securities of the Non-Utility Subsidiaries and/or acquire, retire or redeem any securities of the Non-Utility Subsidiaries that are held by an associated company or affiliate, from time to time, through the Authorization Period, out of capital or unearned surplus, to the extent permitted under applicable corporate law; provided that no Non-Utility Subsidiary will declare or pay any dividend out of capital or unearned surplus unless it: (i) Has received excess cash as a result of the sale of its assets; (ii) has engaged in a restructuring or reorganization; and/or (iii) is returning capital to an associate company. Further, no Non-Utility Subsidiary that derives any material part of its revenues from the sale of goods, services or electricity to Utility Subsidiaries will declare or pay any dividend out or capital or unearned surplus. The Applicants request that the Commission reserve jurisdiction over the payment of such dividends out of capital or unearned surplus when any of these conditions are not met.

[25] Applicants state that, in the event that proxy solicitations are necessary with respect to the internal corporate reorganizations, Applicants will seek the necessary Commission approvals under Sections 6(a)(2) and 12(e) of the Act through the appropriate filing of a declaration.

[26] CEHE will be seeking authority to declare and pay dividends in a separate application in connection with the issuance of transition bonds.

(6) *Financing Subsidiaries*

CNP and its Subsidiaries propose to organize and acquire the common stock or other equity interests of one or more Financing Subsidiaries for the purpose of effecting various financing transactions from time to time through the Authorization Period. Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purposes described herein. The amount of securities issued by the Financing Subsidiaries to third parties will count toward the respective financing limits of its immediate parent as set forth on Exhibit G–1 of the Application. Authorization is requested for the issuance of such securities by the Financing Subsidiaries and for the transfer of proceeds from such issuance to the respective parent companies.

CNP and, to the extent such issuances are not exempt pursuant to Rule 52, the Subsidiaries also request authorization to issue their subordinated unsecured notes ("Subordinated Notes") to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary, in respect of which the Subordinated Note is issued. CNP or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of such Financing Subsidiaries.

It is anticipated that the Financing Subsidiaries will be wholly-owned subsidiaries of CNP and fully consolidated for purposes of financial reporting. No Financing Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act, without first obtaining such further approval as may be required.

The business of the Financing Subsidiary will be limited to effecting financing transactions that have been otherwise authorized for CNP and its Subsidiaries. In connection with such financing transactions, CNP or its Subsidiaries may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary.

Any Financing Subsidiary organized pursuant to this filing shall be organized only if, in management's opinion, the creation and utilization of such Financing Subsidiary will likely result in tax savings, increased access to

capital markets and/or lower cost of capital for CNP or its Subsidiaries.

Each of CNP and its Subsidiaries also requests authorization to enter into an expense-related agreement with its respective Financing Subsidiary, pursuant to which it would agree to pay all expenses of such entity. Any amounts issued by such Financing Subsidiaries to third parties pursuant to this authorization will be included in the additional external financing limitation requested in the Application for the immediate parent of such financing entity. However, the underlying intra-system mirror debt and parent guarantee shall not be so included. Applicants also seek authority for the Financing Subsidiaries to transfer the proceeds of any financing to their respective parent companies.

(7) *Restructuring of Non-Utility Subsidiaries*

The Commission previously authorized CNP to restructure its Non-Utility Subsidiaries from time to time as may be necessary or appropriate.[27] CNP seeks a continuation of this authority, provided that the Non-Utility Subsidiaries will engage, directly or indirectly, only in businesses that are duly authorized, whether by order, rule or statute.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2675 Filed 5–25–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51722; File No. SR–NASD–2004–009]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. To Modify Nasdaq's Clearly Erroneous Rule

May 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On August 23, 2004, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] On May 5, 2005, Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] On May 11, 2005, Nasdaq submitted Amendment No. 3 to the proposed rule change.[5] On May 16, 2005, Nasdaq submitted Amendment No. 4 to the proposed rule change.[6] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 11890 to better serve the current market environment. Nasdaq proposes to implement the proposed rule change immediately upon approval by the Commission. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].[7]

* * * * *

11890. Clearly Erroneous Transactions

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant.

(1) Scope of Authority.

(A) Subject to the limitations described in paragraph (a)(2)(C) below, o[O]fficers of Nasdaq designated by its President shall, pursuant to the procedures set forth in paragraph (a)(2) below, have the authority to review any transaction arising out of the use or operation of any execution or communication system owned or operated by Nasdaq and approved by the Commission, including transactions entered into by a member of a national securities exchange with unlisted trading privileges in Nasdaq-listed securities (a "UTP Exchange") through such a system; provided, however, that the parties to the transaction must be readily identifiable by Nasdaq through its systems. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous. If the officer determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous *if the transaction is eligible for review under the Rule and if* [when] there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(2) Procedures for Reviewing Transactions

(A) Any member, member of a UTP Exchange, or person associated with any such member that seeks to have a transaction reviewed pursuant to paragraph (a)(1) hereof shall submit a written complaint to Nasdaq MarketWatch in accordance with the following time parameters:

(i) for transactions occurring at or after 9:30 a.m., eastern time. but prior to 10 a.m., eastern time, complaints must be received by Nasdaq by 10:30 a.m., eastern time; and

(ii) for transactions occurring prior to 9:30 a.m., eastern time and at or after 10 a.m., eastern time, complaints must be received by Nasdaq within thirty minutes *of execution time.*

(B) Once a complaint has been received in accord with [sub]paragraph (a)(2)(A) above[:], [(i)] the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(1)[;]. *Such supporting information must include the approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if the transactions are not anonymous, Nasdaq system used to execute the*

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[27] *See CNP*, Holding Co. Act Release No. 27692 (June 30, 2003).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 20, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

[4] *See* Form 19b–4, dated May 5, 2005 ("Amendment No. 2"). Amendment No. 2 replaced Amendment No. 1 in its entirety.

[5] *See* Partial Amendment, dated May 11, 2005 ("Amendment No. 3"). Amendment No. 3 revised incorrect cross-references in the rule text.

[6] *See* Partial Amendment, dated May 16, 2005 ("Amendment No. 4"). Amendment No. 4 revised an incorrect paragraph designation in the rule text.

[7] The proposed rule change, as amended, is marked to show changes from the rule as it appears in the electronic NASD Manual available at *www.nasd.com.*

transactions, and the reason the review is being sought. If Nasdaq receives a complaint that does not contain all of the required supporting information, Nasdaq shall immediately notify the filer that the complaint is deficient.

(C) Following the expiration of the period for submission of supporting material, a Nasdaq officer shall determine whether the complaint is eligible for review. A complaint shall not be eligible for review under paragraph (a) unless:

(i) The complainant has provided all of the supporting information required under paragraph (a)(2)(B), and

(ii) The price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

Inside price	*Minimum threshold*
$0–$0.99	$0.02 + (0.10 × Inside Price)
$1.00–$4.99	0.12 + (0.07 × (Inside Price − $1.00))
$5.00–$14.99	$0.40 + (0.06 × (Inside Price − $5.00))
$15 or more	$1.00

For a transaction to buy (sell) a Nasdaq listed security, the inside price shall be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for a transaction to buy (sell) an exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed.

(D) If a complaint is determined to be eligible for review, [(ii)] the counterparty to the trade shall be notified of the complaint via telephone by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(1)[; and]. [(iii)] [e]*E*ither party to a disputed trade may request the written information provided by the other party pursuant to [this] [sub]paragraph *(a)(2).*

(E) [(C)] Notwithstanding [sub]paragraphs (a)(2)(B) *and (D)* above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(1) above.

(F) [(D)] Each member, member of a UTP Exchange, or person associated with any such member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in [sub]paragraphs (a)(2)(B) *and (D)* above.

(G) [(E)] Once a party has applied to Nasdaq for review *and the transaction has been determined to be eligible for review,* the transaction shall be reviewed and a determination rendered, unless *(i)* both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(1), *or (ii) the complainant withdraws its application for review prior to the notification of counterparties pursuant to paragraph (a)(2)(D).*

(b) No change.

(c) Review by the Market Operations Review Committee ("MORC")

(1) *Subject to the limitations described in paragraph (c)(2), a* [A] member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (b) to the MORC unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq within thirty (30) minutes after the person making the appeal is given notification of the determination being appealed, except that if Nasdaq notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by Nasdaq by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade *that is the subject of the appeal* will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the [Committee] *MORC.* Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the [Committee] *MORC* shall not operate as a stay of the determination being appealed, *and the scope of the appeal shall be limited to trades to which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), o*[O]nce a party has appealed a determination to the [Committee] *MORC,* the determination shall be reviewed and a decision rendered, unless *(i)* both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the [Committee]*MORC, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1).* Upon consideration of the record, and after such hearings as it may in its discretion order, the [Committee] MORC, pursuant to the standards set forth in this section, shall affirm, modify, reverse, or remand the determination.

(2) If a Nasdaq officer determines under paragraph (a)(2)(C) that a transaction is not eligible for review, a party appealing such determination must allege in its appeal a mistake of material fact upon which it believes the officer's determination was based. If the MORC concludes that an appeal of such a determination does not allege a mistake of material fact, the determination shall become final and binding. If the MORC concludes that an appeal of such a determination alleges a mistake of material fact, Nasdaq shall notify the counterparty to the transaction and the determination shall be reviewed by the MORC as provided under paragraph (c)(1). If the MORC then finds that the determination was based on a mistake of material fact, the MORC shall remand the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

(3) [(2)] The decision of the [Committee] *MORC* pursuant to an appeal, or a determination by a Nasdaq officer that is not appealed, shall be final and binding upon all parties and shall constitute final Association action on the matter in issue. Any determination by a Nasdaq officer pursuant to paragraph (a) or (b) or any decision by the [Committee] *MORC* pursuant to paragraph (c)[(1)] shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted to Nasdaq or the MORC pursuant to this Rule shall be submitted [via facsimile machine and] within the time parameters specified herein *via such telecommunications procedures as*

Nasdaq may announce from time to time in an NASD Notice to Members or Nasdaq Head Trader Alert [; provided, however, that if requested, Nasdaq staff may authorize submission of material via electronic mail on a case-by-case basis]. Materials shall be deemed received at the time indicated by the *telecommunications* equipment ([i.e.]*e.g.*, facsimile machine or computer) receiving the materials. Nasdaq, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to subsection (b), Nasdaq may instead provide notice to parties via [the] Nasdaq [Workstation II Service] *telecommunications protocols*, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

IM–11890–1. No change.

IM–11890–2. Review by Panels of the MORC. For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq decisions by the MORC, a decision of the MORC may be rendered by a panel [of three or more members] of the MORC. In the case of a review of a determination by a Nasdaq officer under Rule 11890(a)(2)(C) that a transaction is not eligible for review (including a review of the sufficiency of allegations contained in an appeal regarding such a determination), the panel may consist of one or more members of the MORC, *provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member whose revenues from market making activity exceed ten percent of its total revenues. In all other cases, the panel shall consist of three or more members of the MORC,* provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

IM–11890–3. Application of Rule 11890(a)(2)(C). The following example is intended to assist market participants in understanding the minimum price deviation thresholds in subparagraph (a)(2)(C) and their effect on the eligibility of transactions for review under Rule 11890.

ABCD, a Nasdaq listed security, has an inside market of (bid) $12.00–$12.05 (ask). Market Maker A (MMA) enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order 'sweeps' the Nasdaq Market Center order file, which reflects 1,000 shares of liquidity offered at each of ten prices ranging from $12.05 to $12.95. Executions occur, moving through the depth of file, as follows:]

- *Trade #1—1000 shares @ $12.05 (9000 remaining)*
- *Trade #2—1000 shares @ $12.10 (8000 remaining)*
- *Trade #3—1000 shares @ $12.15 (7000 remaining)*
- *Trade #4—1000 shares @ $12.25 (6000 remaining)*
- *Trade #5—1000 shares @ $12.35 (5000 remaining)*
- *Trade #6—1000 shares @ $12.45 (4000 remaining)*
- *Trade #7—1000 shares @ $12.55 (3000 remaining)*
- *Trade #8—1000 shares @ $12.65 (2000 remaining)*
- *Trade #9—1000 shares @ $12.90 (1000 remaining)*
- *Trade #10—1000 shares @ $12.95* (complete)

The inside offer at the time the first share of the order was executed is $12.05, so the minimum price deviation threshold is determined using the following formula:

$$\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00)) = \$0.40 + (0.06 \times (\$12.05 - \$5.00)) = \$0.82$$

Thus, to be eligible for review, a transaction must be at a price that is at least $0.82 higher than the original best offer price (i.e., $12.05 + $0.82 = $12.87). MMA could petition for review of trades #9 and #10, priced at $12.90 and $12.95 respectively, but trades #1 through #8 would not be eligible for review. The sole basis for an appeal to the MORC of the determination that trades #1 through #8 are not eligible for review would be an assertion of a mistake of material fact. For example, an appeal could be based upon an assertion that the Nasdaq officer had made an arithmetical error in determining the minimum price deviation threshold, or had erred in determining the applicable inside price.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 1990, the Commission approved an NASD proposal to add Section 70 to the Uniform Practice Code (now NASD Rule 11890) to permit the NASD to declare clearly erroneous transactions null and void if they arise out of the use or operation of any automated quotation, execution or communication system owned or operated by the NASD.[8] Previously, the NASD had no authority to cancel a transaction, even if one or more terms of the transaction clearly was in error. NASD Rule 11890 gives Nasdaq the ability to resolve, in an expeditious manner, disputes involving obvious errors.

In 1998, an amendment to NASD Rule 11890 was approved which provided additional specificity regarding declarations of clearly erroneous transactions. The amendment clarified procedures and provided Nasdaq officials with the authority to modify the price or size of an erroneous transaction, alter the period in which to submit complaints and subsequent appeals, and cancel or modify clearly erroneous transactions on their own motion during system disruptions or malfunctions.[9] In January 2003, NASD Rule 11890 was amended, to its current state, to further clarify procedures and the scope of Nasdaq officials' authority to cancel or modify clearly erroneous transactions on their own motion to maintain fair and orderly markets and protect investors and the public interest.[10]

In June 2003, Nasdaq MarketWatch assumed responsibility for administering Rule 11890.[11] As a corollary to assuming responsibilities, MarketWatch and Nasdaq staff

[8] *See* Securities Exchange Act Release No. 27867 (Apr. 2, 1990), 55 FR 12978 (Apr. 6, 1990) (SR–NASD–90–6).

[9] *See* Securities Exchange Act Release No. 39550 (Jan. 14, 1998), 63 FR 4333 (Jan. 28, 1998) (SR–NASD–96–51).

[10] *See* Securities Exchange Act Release No. 47233 (Jan. 22, 2003), 68 FR 4525 (Jan. 29, 2003) (SR–NASD–2002–127).

[11] The rule had previously been administered by Nasdaq's Market Operations Department.

undertook a review of the clearly erroneous process and its application in an automated order execution environment. Nasdaq staff researched NASD Rule 11890 with respect to erroneous trades as well as erroneous trade procedures used by other exchanges and ECNs.[12] As a result of the review, Nasdaq is proposing the following changes to NASD Rule 11890: (1) Clarifying the requirements for complaint documentation; (2) establishing minimum price deviation thresholds for seeking a review; (3) stipulating that complaints failing to meet documentation requirements or minimum price deviation thresholds would be rejected, and limiting the grounds for review of such rejections by the MORC; and (4) making several other clarifying changes to the rule text.

Clarify Requirements for Complaint Documentation

The proposed rule change would amend NASD Rule 11890 to require that a complaint, to be eligible for review, include the following information: Approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if transactions are not anonymous, the Nasdaq system used to execute the transactions, and the reason that the review is being sought. Nasdaq believes that the proposed changes provide clarity for market participants as to the minimum data necessary to seek review, allowing for meaningful review as well as providing a better understanding of the issues in question to the contra (non-requesting) participant of the situation. Nasdaq also believes that requiring a member to assert a basis for seeking a review increases transparency in the process and provides clarity to market participants.

Establish Minimum Price Deviation Thresholds

The proposed rule change establishes a minimum price deviation threshold that would provide a "bright line" rule standard for determining when transactions are considered eligible for review. A transaction price that meets these thresholds does not automatically trigger a clearly erroneous determination, but, if the transaction price does not meet these thresholds, the transaction would not be considered for clearly erroneous review. Thus, there would be a conclusive presumption that a transaction to buy (sell) is not clearly erroneous unless its price is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

Inside price	*Minimum threshold*
$0–$0.99	$0.02 + (0.10 × Inside Price)
$1.00–$4.99	$0.12 + (0.07 × (Inside Price − $1.00))
$5.00–$14.99	$0.40 + (0.06 × (Inside Price − $5.00))
$15 or more	$1.00

For a transaction to buy (sell) a Nasdaq listed security, the inside price shall be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for a transaction to buy (sell) an exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed.[13] Nasdaq is also proposing to adopt IM–11890–3 to assist market participants in understanding the minimum price deviation thresholds by providing an example of their application.

Nasdaq believes that the threshold at each price tier is set at a level that would protect normal trading activity from challenge and thereby allow a focus on trades whose distance away from the inside market may be seen to support a claim as to their inadvertence. Nasdaq believes that this approach would better balance the goals of rapid and efficient execution and price discovery while protecting market participants from inadvertent price volatility and market confusion that can result from a mis-priced or mis-sized quote/order. As authority under NASD Rule 11890 is exercised "with a view toward maintaining a fair and orderly market and the protection of investors and the public interest," Nasdaq believes that establishing price deviation thresholds for review offers guidance to defining "clearly erroneous" and, as such, provides clarity, transparency, and consistency for review. Nasdaq also believes that certainty in pricing is crucial to an orderly market.

Reject, as Ineligible, Non-Conforming Clearly Erroneous Petitions

In conjunction with providing guidelines as to required minimum documentation and minimum thresholds, the proposed rule sets out clearly defined consequences for failing to meet minimum filing requirements. Except as provided below, members failing to meet the minimum documentation requirements within the initial 30-minute filing time frame or failing to meet the minimum price deviation parameters would not be eligible to maintain an action under NASD Rule 11890. The reviewing Nasdaq staff would notify the filer immediately of any deficiencies in the filing so that the filer can revise and submit, if possible, within the 30-minute time frame. In cases where a claim is not eligible for review because the transaction does not meet the minimum price deviation thresholds or because the complaint does not include the supporting documentation required by paragraph (a)(2)(B), the party appealing to the MORC must allege a mistake of material fact upon which it believes the officer's determination was based. The MORC would not substantively[14] review an appeal of such a determination that does not allege a mistake of material fact. Accordingly, if a panel of the MORC comprised of one or more non-market-making member finds that a mistake has not been alleged in an appeal, Nasdaq is not required to notify the counterparty to the trade concerning the appeal or to submit the decision for further review by the MORC. If the panel of the MORC concludes that the appeal alleges a mistake of material fact, the counterparty would be notified and the determination would be reviewed by the same panel.[15] If the MORC then finds that the determination was based on a mistake of material fact, the MORC shall remand the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

Other Proposed Changes

In order to clarify the Rule text and expedite procedures under the Rule, Nasdaq is proposing the following additional changes:

[12] *See* PCX Equities, Inc. Rule 7.11 and *www.tradearca.com/exchange/pdfs/ErroneousExecutionPolicy.pdf; instinetgroup.com/legal/trade_policy_guidelines.shtml.* Telephone conversation between John M. Yetter, Senior Associate General Counsel, Nasdaq, David Hsu, Special Counsel, Division, Commission, on May 11, 2005 (clarifying that the correct citation is PCX Equities, Inc. Rule 7.11 and not Pacific Exchange Inc. Rule 7.11).

[13] Trades in exchange-listed securities are reviewed under NASD Rule 5265, which incorporates Rule 11890 by reference.

[14] Telephone conversation among John M. Yetter, Senior Associate General Counsel, Nasdaq, Terri Evans, Special Counsel, Division, Commission, and David Hsu, Special Counsel, Division, Commission, on May 9, 2005 (clarifying that the MORC would not substantively review an appeal of a determination that does not allege a mistake of material fact).

[15] *Id.* (clarifying that panels may consist of more than one member of the MORC).

- The text of IM–11890–2 would be amended to reflect the proposed use of panels of one or more members [16] of the MORC for purposes of reviewing determinations under proposed NASD Rule 11890(a)(2)(C) that a transaction is not eligible for review.
- The rule would be amended to provide that adjudication of a complaint or an appeal is not required if the party submitting the complaint or appeal withdraws it prior to the notification of counterparties.
- The rule would be amended to provide that appeals are focused solely on trades to which the party submitting the appeal is a party. Thus, for example, if Broker A submits a complaint regarding two separate trades with Broker B and Broker C, the trades are broken, and Broker B appeals but Broker C does not, the appeal would focus solely on the trade between Broker A and Broker B.
- The rule currently provides that facsimile machines are the preferred method for submitting materials regarding clearly erroneous adjudications. Nasdaq proposes to amend the rule to provide that parties should use such telecommunications methods as are announced from time to time through an NASD Notice to Members or a Nasdaq Head Trader Alert. Pursuant to this change, Nasdaq proposes to make electronic mail the preferred method, and may, in the future, develop a web-based form for use in submitting complaints and appeals. In light of the upcoming retirement of the Nasdaq Workstation II Service, Nasdaq is also proposing to replace a reference to that service with a more general reference to Nasdaq telecommunications protocols.
- Cross references in the rule would be amended to reflect preferred NASD style, and references to the "Committee" would be replaced with references to the "MORC."

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[17] in general, and with Section 15A(b)(6) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change would provide market participants with clearer information about Nasdaq's requirements for filing a clearly erroneous petition. In Nasdaq's view, this in turn would ensure that Nasdaq staff and the MORC would have more complete information when adjudicating a clearly erroneous petition, and would also provide Nasdaq staff with clearer bases for rejecting clearly erroneous petitions that fail to provide complete information or that relate to transactions at prices sufficiently close to the inside market that they should not be deemed clearly erroneous.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–009 and should be submitted on or before June 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2674 Filed 5–25–05; 8:45 am]

BILLING CODE 8010–01–P

[16] *Id.*

[17] 15 U.S.C. 78*o*–3.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5090]

30-Day Notice of Proposed Information Collection: Form Numbers DS–1950 and DS–5056, Department of State Application for Employment, OMB Control Number 1405–0139

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Application for Employment.
- *OMB Control Number:* 1405–0139.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Human Resources, Office of Recruitment, Examination, Employment (HR/REE).
- *Form Number:* DS–1950 and DS–5056.
- *Respondents:* U.S. Citizens seeking entry into the Department of State Foreign Service and individuals, sophomore through graduate level college and university students, seeking participation in the Department's student programs.
- *Estimated Number of Respondents:* 16,000.
- *Estimated Number of Responses:* 16,000.
- *Average Hours Per Response:* 0.5 hour.
- *Total Estimated Burden:* 8,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from May 26, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Foreign Missions, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Kevin M. Bennecoff, Bureau of Human Resources, Recruitment Division, Student Programs, U.S. Department of State, Washington, DC 20520, who may be reached on 202–261–8869 or by e-mail at *BennecoffKM@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The DS–1950 has been the primary form used by individuals to apply for certain excepted jobs at the Department of State, such as Foreign Service and student intern positions. We wish to continue to use this form to clarify interpretation of applicant responses and how applicants become aware of our program opportunities. The new electronic option mentioned in the 60-day package has been assigned the form number DS–5056.

Methodology: The computer-readable and online forms will be used by applicants for certain excepted service jobs at the Department of State, such as Student Programs and Foreign Service jobs. These programs generate approximately 16,000 applications per year. Data is necessary to determine qualifications, and selections, in accordance with Federal policies. The online version will be filled out and submitted through *careers.state.gov.*

Dated: April 15, 2005.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. 05–10582 Filed 5–25–05; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2005. No comments were received.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: 202–366–5744; FAX: 202–366–7901; or e-mail: *kenneth.kline@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Construction Reserve Fund and Annual Statements.

OMB Control Number: 2133–0032.

Type of Request: Extension of currently approved collection.

Affected Public: Owners or operators of vessels in the domestic or foreign commerce.

Forms: None.

Abstract: The collection consists of an application required for all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire tax benefits under the Construction Reserve Fund (CRF) program. The annual statement sets forth a detailed analysis of the status of the CRF when each income tax return is filed.

Annual Estimated Burden Hours: 153 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of

having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on May 20, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–10504 Filed 5–25–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2005. No comments were received.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Celia Luck, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: 202–366–3581, FAX: 202–366–6988, or e-mail: *celia.luck@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Intermodal Access to Shallow Draft Ports and Terminals Survey.

OMB Control Number: 2133–0534.

Type of Request: Extension of currently approved collection.

Affected Public: Officials at the Nation's key shallow draft marine ports and terminals.

Forms: MA–1024B.

Abstract: The Maritime Administration (MARAD) has primary responsibility for ensuring the availability of efficient water transportation service to shippers and consumers. This information collection is designed to be a survey of critical infrastructure issues that impact the Nation's shallow draft marine ports and terminals. The survey will provide MARAD with key road, rail, and waterside access data as well as security information and highlight the issues that affect the flow of cargo through U.S. shallow draft marine ports and terminals.

Annual Estimated Burden Hours: 8.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, Northwest, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on May 20, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–10505 Filed 5–25–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Suspicious Activity Report by the Securities and Futures Industry

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on a proposed information collection contained in a revised form, "Suspicious Activity Report by the Securities and Futures Industry (SAR–SF)." The form will be used by the securities and futures industry to report suspicious activity to the Department of the Treasury. This request for comments also covers 31 CFR 103.17 and 31 CFR 103.19. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before July 25, 2005.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—SAR-Securities and Futures Industry Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, "Attention: PRA Comments—SAR-Securities and Futures Industry Form."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 3.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report by the Securities and Futures Industry (SAR–SF), 31 CFR 103.17, and 31 CFR 103.19.

OMB Number: 1506–0019.

Form Number: FinCEN Form 101.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On July 1, 2002,

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), P L. 107–56.

FinCEN issued a final rule requiring brokers or dealers in securities ("broker-dealers") to report suspicious transactions ("Broker-Dealer SAR rule"). (67 FR 44048). The final Broker-Dealer SAR rule can also be found at 31 CFR 103.19. On August 5, 2002, FinCEN issued a final rule requiring futures commission merchants and introducing brokers in commodities to report suspicious transactions ("FCM SAR rule"). The final FCM SAR rule can also be found at 31 CFR 103.17.

The information collected on the revised form is required to be provided pursuant to 31 U.S.C. 5318(g), 31 CFR 103.17 and 31 CFR 103.19. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel, and to the registered securities associations and national securities exchanges (so-called self-regulatory organizations) for use in official performance of their duties, for regulatory purposes and in investigations and proceedings involving domestic and international money laundering, terrorist financing, tax violations, fraud, and other financial crimes.

Broker-dealers, futures commission merchants, and introducing brokers in commodities required to report suspicious transactions, or reporting such transactions voluntarily, will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and to the prohibition contained in 31 U.S.C. 5318(g)(2) against notifying any person involved in the transaction that a suspicious activity report has been filed.

The draft revised SAR–SF is presented only for purposes of soliciting public comment on the form. A number of editorial and simplifying changes are being made to the current SAR–SF, FinCEN Form 101. Item 13, e-mail address, is removed. Item 23(s) (item 22s on the revised form), market where traded, is expanded to accept a three to five letter code entry. Part III, Law Enforcement or Regulatory Contact Information, is deleted and the instructions modified to provide that this information should be included in the narrative when appropriate. Part IV is relabeled as Part III and an optional block has been added for the reporting institution to add an internal control or tracking number to facilitate any coordination with jointly filed reports. In Part IV (new Part III) the type of institution or individual is spelled out for clarity. The guide for completing the narrative is moved to the bottom of page two and the narrative to page three. This change shortens the form by one full page. Finally, the instructions are amended to reflect these changes. In developing the revised form, FinCEN worked with the Securities and Exchange Commission and the Commodity Futures Trading Commission on these changes. This draft form should not be used at this time to report suspicious activity. A final version of the form will be made available at a later date.

Type of Review: Revision of an approved information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Reporting Burden: Average of 60 minutes per response. (The reporting burden of the regulations (31 CFR 103.17 and 103.19) is reflected in the burden for the form.)

Estimated Recordkeeping Burden for 31 CFR 103.17 or 31 CFR 103.19: 2 hours.

Estimated number of respondents = 8,300.

Estimated Total Annual Responses = 5,600.

Estimated Total Annual Reporting and Recordkeeping Burden: 16,800 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 16, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

BILLING CODE 4810–0 2–P

FinCEN Form 101

January 2006
Previous editions will not be accepted after July 2006

Suspicious Activity Report by the Securities and Futures Industries

Please type or print. Always complete entire report. Items marked with an asterisk * are considered critical. (See instructions.)

OMB No. 1506 - 0019

1 Check the box if this report corrects a prior report (See instructions) ☐

Part I Subject Information

2 Check box a ☐ if multiple subjects box b ☐ subject information unavailable

*3 Individual's last name or entity's full name	*4 First name	5 Middle initial
6 Also known as (AKA - individual), doing business as (DBA - entity)	7 Occupation or type of business	
*8 Address		*9 City
*10 State	*11 ZIP code	*12 Country code (If not U.S.) (See instructions)
*13 SSN/ITIN (individual), or EIN (entity)		

*14 Account number(s) affected, if any. Indicate if closed
Acc't # _____ yes ☐ Acc't # _____ yes ☐
Acc't # _____ yes ☐ Acc't # _____ yes ☐

15 Date of birth ___/___/___ MM DD YYYY

*16 Government issued identification (If available)
a ☐ Driver's license/state ID b ☐ Passport c ☐ Alien registration d ☐ Corporate/Partnership Resolution
e ☐ Other _____
f ID number | g Issuing state or country (2 digit code) ____

17 Phone number - work	18 Phone number - home	19 Is individual/business associated/affiliated with the reporting institution? (See instructions)
( ) -	( ) -	a ☐ Yes b ☐ No

Part II Suspicious Activity Information

*20 Date or date range of suspicious activity
From ___/___/___ To ___/___/___ MM DD YYYY

*21 Total dollar amount involved in suspicious activity $ .00

22 Instrument type (Check all that apply)

a ☐ Bonds/Notes
b ☐ Cash or equiv.
c ☐ Commercial paper
d ☐ Commodity futures contract
e ☐ Money Market Fund
f ☐ Mutual Fund
g ☐ OTC Derivatives
h ☐ Other derivatives
i ☐ Commodity options
j ☐ Security futures products
k ☐ Stocks
l ☐ Warrants
m ☐ Other securities
n ☐ Other non-securities
o ☐ Foreign currency futures/options
p ☐ Foreign currencies
q ☐ Commodity type _____ (Please identify)
r ☐ Instrument description _____
s ☐ Market where traded ____ (Enter appropriate three to five-letter code.)
t ☐ Other (Explain in Part V)

23 CUSIP® number	24 CUSIP® number	25 CUSIP® number
26 CUSIP® number	27 CUSIP® number	28 CUSIP® number

*29 Type of suspicious activity (Check all that apply):

a ☐ Bribery/gratuity
b ☐ Check fraud
c ☐ Computer intrusion
d ☐ Credit/debit card fraud
e ☐ Embezzlement/theft
f ☐ Commodity futures/options fraud
g ☐ Forgery
h ☐ Identity theft
i ☐ Insider trading
j ☐ Mail fraud
k ☐ Market manipulation
l ☐ Money laundering/Structuring
m ☐ Prearranged or other non-competitive trading
n ☐ Securities fraud
o ☐ Significant wire or other transactions without economic purpose
p ☐ Suspicious documents or ID presented
q ☐ Terrorist financing
r ☐ Wash or other fictitious trading
s ☐ Wire fraud
t ☐ Other (Describe in Part V)

Part III Reporting Financial Institution Information 2

*30 Name of financial institution or sole proprietorship | *31 EIN / SSN / ITIN

*32 Address

*33 City | *34 State | *35 ZIP code | 36 Internal control/file number (Optional)

37 Additional branch address locations handling account, activity or customer. 38 ☐ Multiple locations (See instructions)

39 City | 40 State | 41 ZIP code

42 Central Registration Depository number | 43 SEC ID number | 44 NFA ID number

45 Has this reporting individual/entity jointly filed this report with another reporting individual/entity? Yes ☐ (Provide details in Part V) No ☐

46 Type of institution or individual- Check box(es) for functions that apply to this report

a ☐ Agricultural trade option merchant
b ☐ Affiliate of bank or bank holding co.
c ☐ Commodity Pool Operator
d ☐ Commodity Trading Advisor
e ☐ Direct participation program
f ☐ Futures Commision Merchant
g ☐ Futures floor broker
h ☐ Futures floor trader
i ☐ Introducing Broker-Commodities
j ☐ Investment Adviser
k ☐ Investment company - mutual fund
l ☐ Market maker
m ☐ Municipal securities dealer
n ☐ National Futures Association
o ☐ Registered Entity-Futures
p ☐ Other Registered Futures Association
q ☐ Securities broker-dealer - clearing
r ☐ Securities broker-dealer - introducing
s ☐ Securities dealer
t ☐ Securities floor broker
u ☐ Securities options broker-deal
v ☐ SRO-securities
w ☐ Specialist
x ☐ Subsidiary of bank or bank holding co.
y ☐ U.S. Government broker-dealer
z ☐ U.S. Government interdealer broker
aa ☐ Other (Describe in Part V)

Part IV Contact For Assistance

*47 Last name of individual to be contacted regarding this report | *48 First name | *49 Middle initial

*50 Title/Position | *51 Work phone number ( ) - | *52 Date report prepared ___/___/___ MM DD YYYY

Send completed reports to: ***Detroit Computing Center, Attn: SAR-SF, P.O. Box 33980, Detroit, MI 48232***

Part V Suspicious Activity Information - Narrative Checklist

Explanation/description of suspicious activity(ies). This section of the report is critical. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological narrative description of the activity. The narrative should address as much of the information listed below as possible.

a. **Describe** conduct that raised suspicion and the date discovered.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation (e.g. transaction records, new account information, tape recordings, e-mail messages, correspondence, etc.) and retain such documentation in your file for five years.
d. **Explain** who benefited, financially or otherwise, from the transaction(s), how much, and how (if known).
e. **Describe and retain** any admission or explanation of the transaction(s) provided by the subject(s) or other persons. Indicate to whom and when it was given.
f. **Describe and retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, SRO, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., main office, branch, other).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction. Note if this a 90-day follow-up.
i. **Indicate** whether there is any related litigation. If so, specify the name of the litigation and the court where the action is pending.
j. **Indicate** whether U.S. or foreign currency and/or U.S. or foreign negotiable instrument(s) were involved. If foreign, provide the amount, name of currency, and country of origin.
k. **Indicate** "Market where traded" and "Wire transfer identifier" information when appropriate.
l. **Indicate** whether funds or assets were recovered and, if so, enter the dollar value of the recovery in whole dollars only.
m. **Indicate** any additional account number(s), and any foreign bank(s) account number(s) which may be involved.
n. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
o. **Describe** any suspicious activities that involve transfer of funds to or from a foreign country, or transactions in a foreign currency. Identify the country, sources and destinations of funds.
p. **Describe** subject(s) position if employed by the financial institution.
q. **Indicate** whether securities, futures, or options were involved. If so, list the type, CUSIP® number or ISID® number, if applicable, and amount.
r. **Describe** the type of institution filing this report, if this is not clear from Part IV. Specifically, state if the institution engages in more than one type of business.
s. **Indicate**, in instances when the subject or entity has a CRD or NFA number, what that number is.
t. If a law enforcement agency has been contacted, list the name of the agency, the name of any person contacted, their title, their telephone number, and when they were contacted here in Part V.
u. If correcting a prior report complete the form in its entirety and note the corrected items here in Part V

Suspicious Activity Information - *Narrative (continued from page 2) 3

Information already provided in earlier parts of this form need not necessarily be repeated if the meaning is clear.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Tips on SAR form preparation and filing are available in the SAR Activity Review at **www.fincen.gov/pub_reports.html**

Enter explanation/description in the space below.

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees, and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure."

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents who, voluntarily or by means of a suspicious activity report, report suspicious transactions to the government, may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the financial institution shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a timely suspicious activity report.

When to file a report

1. Every broker or dealer in securities (BD), futures commission merchant (FCM), and introducing broker in commodities (IB-C) within the United States shall file with FinCEN, to the extent and in the manner required by 31 CFR 103.19 and 103.17, a report of any suspicious transaction relevant to a possible violation of law or regulation. A BD, FCM or IB-C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by 31 CFR 103.19 or 103.17. A voluntary filing does not relieve a BD, FCM or IB-C from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), a self-regulatory organization ("SRO") (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c (a)(26)), or any registered futures association (RFA) or registered entity (RE) as these terms are defined in the Commodity Exchange Act (CEA), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

2. A transaction requires reporting if it is conducted or attempted by, at, or through a BD, FCM or IB-C, it involves or aggregates funds or other assets of at least $5,000, and the BD, FCM, or IB-C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

i. Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

ii. Is designed, whether through structuring or other means, to evade any requirements of 31 CFR 103 or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311 - 5314, 5316 - 5332;

iii. Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the BD, FCM or IB-C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

iv. Involves use of the BD, FCM or IB-C to facilitate criminal activity.

3. The obligation to identify and properly and timely report a suspicious transaction rests with each BD, FCM, and IB-C involved in the transaction, provided that no more than one report is required to be filed by any of the BDs, FCMs, or IB-Cs involved in a particular transaction (so long as the report filed contains all relevant facts).

4. A SAR-SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting BD, FCM, or IB-C of facts that may constitute a basis for filing a SAR-SF. If no suspect is identified on the date of such initial detection, a BD, FCM, or IB-C may delay filing a SAR-SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the BD, FCM, or IB-C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-SF. BDs, FCMs, or IB-Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-SF. The BD, FCM, or IB-C may also, but is not required to, contact the SEC or the CFTC to report in such situations.

5. **Exceptions.** A BD, FCM, or IB-C is not required to file a SAR-SF to report:

i. A robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the BD files a report pursuant to the reporting requirements of 17 CFR 240.17f-1;

ii. A violation otherwise required to be reported on a SAR-SF: (a) of any of the federal securities laws or rules of an SRO by the BD or any of its officers, directors, employees or other registered representatives, other than a violation of 17 CFR 240.17a-8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO; or (b) under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR Chpt.1), or the rules of any RFA or RE as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB-C or any of its officers, directors, employees or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or an RFA or RE.

6. The Bank Secrecy Act requires financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious aspects of the transaction). If a currency transaction is $10,000 or less and is suspicious, the institution should only file a suspicious activity report. Appropriate records must be maintained in each case.

See: 31 CFR Part 103; 17 CFR 240.17a-8; 17 CFR 405.4; 17 CFR 42.2

General Instructions

A. Abbreviations and Definitions

1.	AKA--	also known as (individual)
2.	ASE--	American Stock Exchange
3.	BD--	Broker or Dealer in Securities
4.	CBOE--	Chicago Board Options Exchange
5.	CBOT--	Chicago Board of Trade
6.	CME--	Chicago Mercantile Exchange
7.	CPO--	Commodity Pool Operator
8.	CRD--	Central Registration Depository
9.	CFTC--	Commodity Futures Trading Commission
10.	CTA--	Commodity Trading Advisor
11.	CUSIP®--	Committee on Uniform Securities ID Procedures
12.	DEA--	Drug Enforcement Administration
13.	DBA--	doing business as (entity)
14.	EIN--	Employer Identification Number
15.	EUREX--	European Exchange
16.	FBI--	Federal Bureau of Investigation
17.	FCM--	Futures Commission Merchant
18.	IA--	Investment Adviser
19.	IB-C--	Introducing Broker-Commodities
20.	ICE--	Immigration & Customs Enforc.
21.	IRS--	Internal Revenue Service
22.	ITIN--	Individual taxpayer ID number
23.	ISID®--	International Securities ID Directory
24.	KCBOT	Kansas City Board of Trade
25.	LIFFE--	London International Financial Futures Exchange

26.	MATIF--	Marche a terme International de France
27.	MGEX	Minneapolis Grain Exchange
28.	NASD--	NASD
29.	NASDAQ--	Nasdaq Stock Market
30.	NFA--	National Futures Association
31.	NYBOT--	New York Board of Trade (CSCE, CTN, FINEX, NYFE)
32.	NYMEX--	New York Mercantile Exchange
33.	NYSE--	New York Stock Exchange
34.	NQLX--	Nasdaq Liffe Markets
35.	OTC--	Over-the-counter
36.	PCX--	Pacific Exchange
37.	PHLX--	Philadelphia Stock Exchange
38.	RE--	Registered Entity
39.	RFA--	Registered Futures Association
40.	SEC--	Securities and Exchange Commission
41.	SRO--	Self-Regulatory Organization
42.	SSN--	social security number
43.	USFE--	U. S. Futures Exchange

B. How to make a report:

1. **This form can be e-filed through the Bank Secrecy Act E-filing System. Go to http://bsaefiling.fincen.treas.gov/index.jsp to register.** This form is also available for download on the Financial Crimes Enforcement Network's Web site at www.fincen.gov, or may be ordered by calling the IRS Forms Distribution Center at (800) 829-2437.

Send each completed suspicious activity report to:

Detroit Computing Center
Attn: SAR-SF
P.O. Box 33980
Detroit, MI 48232

2. Items marked with an asterisk (*) are considered critical and must be completed if known.

3. If the information for a critical item is not known or not applicable, enter special responses "None," "Not Applicable," "Unknown," or "XX" (state/country/middle initial) as appropriate to complete the item.

4. Complete each suspicious activity report by providing as much information as possible on initial and corrected reports.

5. Do not include supporting documentation with the suspicious activity report filed. Identify and retain a copy of the suspicious activity report and all supporting documentation (e.g. transaction records, new account information, tape recordings, E-mail messages, correspondence, etc.) or business record equivalent for your files for five (5) years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.

6. If more than one subject is being reported, make a copy of page 1, complete only the subject information in Part I, and attach the additional page(s) behind page 1. If more space is needed to complete any other item(s), identify that item in Part V by "item number," and provide the additional information.

7. Type or complete the report using block written letters.

8. Enter all **dates** in MM/DD/YYYY format where MM = month, DD = day, and YYYY = year. Precede any single number with a zero, i.e., 01,02, etc.

9. List all **Telephone numbers** with (area code) first and then the seven numbers, using the format (XXX) XXX-XXXX. List international telephone and fax numbers in Part V.

10. Always enter an **individual's name** by entering the last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

11. Enter all **identifying numbers** (alien registration, Corporate/Partnership Resolution, CRD, CUSIP,* driver's license/state ID, EIN, ITIN, Foreign National ID, ISID,* NFA ID, passport, SEC, and SSN, etc.) starting from left to right. Do not include spaces, dashes, or other punctuation.

12. Enter all **Post Office ZIP codes** with at least the first five numbers (all nine (ZIP + 4)) if known) and listed from left to right.

13. Enter all **monetary amounts** in U.S.Dollars. Use whole dollar amounts rounded up when necessary. Use this format: $0,000,000.00. If foreign currency is involved, state name of currency and country of origin in Part V.

14. **Addresses, general.** Enter the permanent street address, city, two letter state/territory abbreviation used by the U.S. Postal Service, and ZIP code (ZIP+4 if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual, also enter any apartment number or suite number, road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code, and the name of the country (country codes may be found at www.fincen.gov/reg_bsaforms.html). Complete any part of the address that is known, even if the entire address is not known. If from the United States, leave country item blank.

C. Specific Suspicious Activity Report Preparation Instructions

Item 1-- Type of report. Check Box if this report is filed to correct a previously filed SAR-SF. To correct a report, a new SAR-SF must be completed in its entirety. Note corrected items in Section VI (see line "u").

Part I Subject Information

Enter information about the person(s) or entity involved that was the cause of this report, not the victim of the activity.

Item 2 -- Multiple Subjects. Check box (a) if multiple subjects are involved. Attach additional copy(ies) of Part I to this report for each subject. Check box (b) if subject information unavailable.

Items 3, 4, and 5--*Name of Subject. See General Instruction B10. If the organization is operated under a different trade or business name than its legal name, enter the organization's legal name in Item 3 (e.g., Smith Enterprises, Inc.) and the name of the business in Item 6 (e.g., Smith's Tours). If more than one Part I is required, make a copy of page 1 and provide the additional information.

Item 6-- Also known as, or doing business as. If a reporting institution has knowledge of a subject's separate "AKA" and/or entity's "DBA" name, enter it in Item 6.

Item 7-- Occupation/type of business. If known, identify the occupation, profession, or business that best describes the individual in Part I (e.g., attorney, car dealer, carpenter, doctor, farmer, plumber, truck driver, etc.). Do not use nondescript terms such as businessman, merchant, store owner (unless store's name is provided). If self employed, unemployed, or retired are used, add current/former profession if known (e.g. self-employed building contractor, unemployed teacher, retired attorney etc.). If the individual's business activities can be described more fully, provide the additional information in Part V.

Items 8, 9, 10, 11, and 12-- *Address. See General Instructions B12 and B14.

Item 13-- *SSN/ITIN (individual) or EIN (entity). See General Instruction B11 and definitions. If the subject named in Items 3 through 6 is a U.S. Citizen or an alien with a SSN, enter his or her SSN in Item 13. If that individual is an alien who has an ITIN, enter that number. If the subject is an entity, enter the EIN.

Item 14-- *Account number(s). See General Instruction B11. Enter up to four affected account numbers in or through which the suspicious activity occurred. If no account number is affected leave item 14 blank. Check the "yes" box to indicate if the account is closed. If more than four accounts are affected, provide the additional information in Part V.

Item 15-- Date of birth. See General Instruction B8. If an individual is named in Items 3 through 5, enter the date of birth. If the month and/or day is not available or unknown, fill in with zeros (e.g., "01/00/1969" indicates an unknown date in January, 1969).

Item 16-- *Government issued identification. See General Instruction B11. Check the appropriate box showing the type of document used to verify the subject's identity. Box "d" denotes that a corporate or partnership resolution was used to identify an entity. If you check the "Other" box "e", be sure to specify the type of document used. In box "f", list the ID number of the identifying document. In box "g", list the issuing authority.

Items 17 & 18-- Telephone numbers. See General Instruction B9. List any additional number(s) (e.g., hotel, cell, etc.) in Part V.

Item 19-- Institution association. Indicate whether the subject identified in Part I is, or was, associated with the reporting institution as an "as-

sociated person," as defined in section 3(a)(18) of the Securities Exchange Act of 1934 or CFTC rule 1.3(aa), or is, or was, "affiliated with" the reporting institution, as defined in CFTC rule 4.7(a)(1)(i). If so, explain in Part V.

Part II Suspicious Activity Information

Item 20-- *Date or date range of suspicious activity. See General Instruction B8. Enter the date of the reported activity in the "From" field. If more than one day, indicate the duration of the activity by entering the first date in the "From" field and the last date in the "To" field. If the same individual or organization conducts multiple or related activities within the 30 calendar day period after the date of initial detection, the reporting institution may consider reporting the suspicious transactions on one form, but only if doing so will fully describe what has occurred. A new report must be filed for other related suspicious transactions committed after the initial detection period.

Item 21-- *Total dollar amount. See General Instruction B13. Enter the total dollar value of the funds or assets involved in the suspicious activity that is conducted by the same individual or organization within the 30 calendar day period after the date of initial detection. For multiple or related suspicious transactions, show the breakdown of this aggregated total in Part V. For abuse by a person associated with the institution, the value of this item can be zero (0). Do not use any words, such as "thousand", "million", etc. For foreign currency, convert to U.S. Dollars.

Item 22-- Instrument type. Mark the type of instrument identified in Item 22. (Check all that apply.) In Item 22b, indicate U.S. Dollars only. For Item 22r, indicate currency if other than U.S. Dollars. For Item 22s, enter appropriate three to five-letter code.

Items 23, 24, 25, 26, 27, and 28-- CUSIP® Numbers. Enter up to six (6) securities numbers. If more, enter additional in Part V.

Item 29-- *Type of suspicious activity. Check the box(es) that identifies the suspicious activity. More than one box may be checked. Provide a brief explanation in Part V of why each box is checked. If none of these items applies, mark "other" and provide in Part V an explanation of the type of suspicious activity.

Part III Reporting Financial Institution Information

Item 30-- *Name of financial institution or sole proprietorship. Enter the full legal name of the institution, i.e., the name shown on the charter or other document creating the entity and registered with the SEC or CFTC. If a sole proprietor, enter the business name of the proprietorship registered with the SEC or CFTC.

Item 31--*Employer identification number. See General Instruction B11. Enter the reporting financial institution's EIN. If sole proprietor enter SSN or ITIN.

Items *32, *33, *34, and *35-- Address. See General Instruction B14. This address should be of the principal office or headquarters in the United States.

Item 36-- Internal control/file number. (Optional) Enter any internal file or report number assigned by the reporting institution to track this report.

Items 37, 38, 39, 40 and 41-- Additional address locations. See General Instruction B14. If more than one location is involved, e.g., branch office etc., provide the address of the location where the most significant portion of the suspicious transactions occurred. If more than two locations are involved check box 38 and list locations in Part V.

Item 42-- Central Registration Depository number. See General Instruction B11. If none, leave blank.

Item 43-- SEC number. See General Instruction B11. This is a ten digit number including the prefix of either "8" or "008" depending on the system used. If none, leave blank.

Item 44-- NFA identification number. See General Instruction B11. If none, leave blank.

Item 45-- Joint Filing. If this report is being filed jointly by more than one financial institution (see "When to file a report Item 3"I check the appropriate box and, in Part V, note that this a joint filing, indicate the name of the other financial institution(s), and then provide the narrative details.

Item 46-- Type of reporting institution. Check all boxes that apply to this particular report. If none of these categories apply to you, explain in Part V. The Federal Bureau of Public Debt, its agents, and any other federal agency issuers of Federal Securities should mark "U.S. Government broker/dealer." State or municipal issuers of municipal securities should mark "Municipal broker/dealer." A securities SRO, RFA, or RE-futures entity filing this form should identify the institution type as that of the member institution for which this report is being filed, and in **Part IV,** (Items 47, 48, 49, 50, 51, and 52) identify the securities SRO, RFA or RE-futures entity individual to contact.

Part IV Contact for assistance

Items 47, 48, and 49-- *Contact individual. See General Instruction B10.

Item 50-- *Title/Position. Enter the job title/position of the contact individual.

Item 51-- *Work telephone number. See General Instruction B9.

Item 52-- *Date report prepared. See General Instruction B8.

Part V * Suspicious Activity Information - Narrative See page 2 of the form for instructions and checklist.

Paperwork Reduction Act Notice:

The purpose of this form is to provide an effective means for financial institutions to notify appropriate law enforcement agencies of suspicious transactions that occur by, through, or at the financial institutions. This report is required by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal securities and futures regulatory agencies and the U.S. Departments of Justice and Treasury, and other authorized authorities, may use and share this information. Public reporting and recordkeeping burden for this form is estimated to average 45 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act, P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[FR Doc. 05–10503 Filed 5–25–05; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 20, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 27, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0058.

Form Numbers: IRS Form 1028.

Type of Review: Extension.

Title: Application for Recognition of Exemption under Section 521 of Internal Revenue Code.

Description: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code (IRC) section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 50.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—44 hr., 14 min.
Learning about the law or the form—1 hr., 44 min.
Preparing the form—4 hr., 23 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,545 hours.

OMB Number: 1545–1911.

Form Number: IRS Form 8889.

Type of Review: Extension.

Title: Health Savings Accounts (HSAs).

Description: Form 8889 is used by taxpayers to report HSA contributions, deductions, and distributions.

Respondents: Individuals and households.

Estimated Number of Respondents/ Recordkeepers: 1,400,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—33 min.
Learning about the law or the form—19 min.
Preparing the form—1 hr., 9 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,234,000 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–10558 Filed 5–25–05; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 20, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 27, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0723.

Regulation Project Number: LR–115–72 Final.

Type of Review: Extension.

Title: Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes.

Description: Chapters 31 and 32 of the Internal Revenue Code impose excise taxes on the sale or use of certain articles. Section 6416 allows a credit or refund of the tax to manufacturers in certain cases. Sections 6420, 6421, and 6427 allow credits or refunds of the tax to certain users of the articles.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms, State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 1,500,000.

Estimated Burden Hours Respondent/ Recordkeeper: 19 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 475,000 hours.

OMB Number: 1545–1646.

Regulation Project Number: REG–209060–86 Final.

Type of Review: Extension.

Title: Return Requirement for United States Persons Who Acquire or Dispose of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes Substantially.

Description: Section 6046A requires U.S. persons to provide certain information with respect to the acquisition or disposition of a 10-percent interest in, or a 10-percent change in ownership of, a foreign partnership. This regulation provides reporting rules to identify U.S. persons with respect to these interests.

Respondents: Business or other for-profit, individuals and households, not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1767.

Regulation Project Number: REG–107644–98 Final.

Type of Review: Extension.

Title: Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.

Description: The primary reason for obtaining this information is to ensure compliance by taxpayers electing to use both the LIFO inventory method and the IPIC method of accounting for their dollar-value inventory pools. Most respondents will be manufacturers, wholesalers, and retailers of tangible personal property.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1 hour.

OMB Number: 1545–1920.

Form Number: IRS Form 12311.

Type of Review: Extension.

Title: Notice Regarding Repayment of a Buyout Prior to Re-employment with the Federal Government.

Description: Form 12311 is used to identify former Federal Employees who received a buyout within the past 5 years and are requesting re-employment.

Respondents: Individuals and households.

Estimated Number of Respondents: 33,085.

Estimated Burden Hours Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,757 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–10559 Filed 5–25–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Sagamore Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 2004 Revision, published July 1, 2004, at 69 FR 40224.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2004 Revision, on page 40254 to reflect this addition:

Sagamore Insurance Company (NAIC #40460). BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636–9800 X–307. UNDERWRITING LIMITATION b/: $8,897,000. SURETY LICENSES c/: AL, AK, AZ, CO, CT, DE, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MN, MS, MO, MT, NE, NM, NY, NC, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, WY. INCORPORATED IN: Indiana

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04926–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: May 20, 2005.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 05–10578 Filed 5–25–05; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
May 26, 2005

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2005; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AH61

Revision of Fee Schedules; Fee Recovery for FY 2005

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2005, less the amounts appropriated from the Nuclear Waste Fund (NWF). The total amount to be recovered for FY 2005 is approximately $540.7 million. After accounting for carryover and billing adjustments, the net amount to be recovered through fees is approximately $538 million.

DATES: Effective July 25, 2005.

ADDRESSES: The comments received and the NRC's work papers that support these final changes to 10 CFR parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Tammy Croote, telephone 301–415–6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 90 percent of its FY 2005 budget authority, less the amounts appropriated from the NWF, through fees. In the Consolidated Appropriations Act of 2005 (Pub. L. 108–447), as adjusted by the rescission discussed in Section 122(a), Congress appropriated $669.3 million to the NRC for FY 2005. This sum includes $68.5 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2005 is approximately $540.7 million. After accounting for carryover and billing adjustments, the net amount to be recovered through fees is approximately $538 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses and, for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Response to Comments

The NRC published the FY 2005 proposed fee rule on February 22, 2005 (70 FR 8677) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received 13 comments dated on or before the close of the comment period (March 24, 2005) and 3 additional comments thereafter, for a total of 16 comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Legal Issues

Information Provided by NRC in Support of Proposed Rule

Comment. Several commenters urged the NRC to provide licensees and the public with a more detailed explanation of the activities and associated costs that form the basis for NRC's fees. These commenters stated that the NRC should inform stakeholders of the costs associated with each component of reactor regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment on the proposed fee rule. The commenters stated that the NRC should provide an itemized accounting of the major elements that comprise the annual fee, including detailed information on the outstanding major contracts, their purpose, and their costs.

These commenters further stated that industry's ability to evaluate the NRC's application of resources and priorities is impeded because the NRC allocated 72 percent of its recoverable budget to the generic assessment under part 171, while only 28 percent is recovered under the discrete fee provisions of part 170.

Response. Consistent with the requirements of OBRA–90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 90 percent of the NRC's FY 2005 budget authority, less the amounts appropriated from the NWF, from applicants and the various classes of NRC licensees. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs

for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted full time equivalent (FTE) and contract costs at the planned activity level for all agency activities. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned activity within each program to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

To assist commenters, the NRC also made available in the Public Document Room NUREG–1100, Volume 20, "Performance Budget: Fiscal year 2005" (February 2004), which discusses the NRC's budget for FY 2005, including the activities to be performed in each program. This document is also available on the NRC public Web site at *http://www.nrc.gov/reading-rm.html*. The extensive information available provided the public with sufficient information on how NRC calculated the proposed fees. Additionally, the contact listed in the proposed fee rule was available during the public comment period to answer any questions that commenters had on the development of the proposed fees.

Regarding the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, the NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, because fee allocation is controlled by statute. (The NRC also notes its estimated fee recovery in FY 2005 from parts 171 and 170 fees is 71 percent and 29 percent, respectively.) The NRC assesses part 170 fees under the IOAA, consistent with inplementing Office of Management and Budget (OMB) Circular A–25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Generic costs that do not provide special benefits to identifiable recipients cannot be recovered under part 170. Further, the NRC notes that, as required by OBRA–90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. The NRC's work papers clearly set forth the components of these generic costs and how those costs are recovered through annual fees. Additionally, the NRC notes that it has taken action to maximize the amount recovered under part 170, consistent with existing law and agency policy. For example, in FY 1998 the NRC began charging part 170 fees for all resident inspectors' time (63 FR 31840; June 10, 1998) and in FY 1999 the NRC started charging part 170 fees for all project manager activities associated with oversight of the assigned license or plant (64 FR 31448; June 10, 1999). In FY 2003, the NRC amended its regulations to allow the NRC to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and use of mixed oxide fuel. Additionally, in this year's fee rule, the NRC is revising its hourly rate calculation formula to better reflect actual agency costs, resulting in higher hourly rates. Once implemented, the NRC estimates that the increased hourly rates will increase fee recovery under part 170 from approximately 29 percent in FY 2005 to more than 37 percent in FY 2006. The NRC strives, as a matter of policy, to maximize its fee collections under part 170.

B. Specific Part 170 Issues

1. Hourly Fees

Comment. Several commenters expressed concerns about the large increases in the NRC's hourly rates associated with the proposed changes to 10 CFR 170.20. One commenter was concerned that these changes disproportionately shift NRC management and overhead costs to single unit licensees with an NRC project manager and two resident inspectors, as compared to multiple unit sites that may share project manager and resident inspector resources. This commenter stated that these overhead costs should more appropriately be included in 10 CFR Part 171 fees.

Response. The NRC acknowledges that the increases to the part 170 hourly rates are more significant this year than in previous years, and agrees that these increases will have a greater impact on the sites that receive more part 170 services (*e.g.*, sites with more than one resident inspector). The NRC's hourly rates are based on budgeted costs and must be established each year to meet the NRC's fee recovery requirements. The primary reason for the increases in the hourly rates in FY 2005 is the NRC's use of a revised estimate of the number of direct hours per FTE in calculating these rates. The NRC's new hourly rates are justified because they more accurately reflect the full cost of providing services under part 170. The OMB's Circular A–25, "User Charges," emphasizes that agency fees should reflect the full cost of providing services to identifiable beneficiaries. The higher hourly rates are consistent with this guidance. The increases also support industry comments that consistently recommend the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees. Therefore, the NRC is retaining the revised hourly rate formula as presented in the FY 2005 proposed fee rule. This results in hourly rates of $205 for the Nuclear Reactor Safety (reactor) program, and $197 for the Nuclear Materials and Waste Safety (materials) program. Although the higher hourly rates will have a greater impact on licensees that receive more part 170 services, the NRC believes this is appropriate because the new rates more accurately reflect the costs of providing these services.

2. Increase in the Category 9A Evaluation Fee

Comment. One commenter objected to the increase in the fees for materials category 9A (device safety evaluations) in 10 CFR 170.31, stating the increases are well beyond the inflation rate and capricious.

Response. The NRC recognizes that there was a large increase in the evaluation fee for materials category 9A. The change is a result of both the increase in the materials program hourly rate as well as a revised estimate of the average professional staff time required to process this type of application. As previously noted, the increase in the hourly rate is due to the revision of the NRC's hourly rate calculation formula to better reflect actual agency costs. The change in the average professional staff time estimate is based on the biennial review of fees performed for the FY 2005 fee rule, in compliance with the Chief Financial Officers (CFOs) Act of 1990 (Pub. L. 101–578, November 15, 1990, 104 Stat. 2838). During the biennial review, the NRC evaluates the historical professional staff hours used to process an application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This evaluation indicated that

processing time for most fee categories decreased or remained the same; however, processing time for some fee categories, including 9A, increased because of the increased staff effort associated with processing these requests. The increased staff effort for these categories is due to the complexity of the submissions and the additional review required to assure the continued quality and adequacy of technical and regulatory determinations. The biennial review completed for the FY 2005 fee rule also reflected more substantial data (*i.e.*, larger data sets) available for this assessment than in previous years. (The data on the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2003 [68 FR 36714; June 18, 2003]). The revised fees better reflect actual agency costs, and therefore the NRC believes the fee increases are justified.

3. Fees for Unlicensed Sites in Decommissioning

Comment. One commenter expressed its opposition to the imposition of part 170 fees on unlicensed companies currently in site decommissioning, stating that these companies are not receiving a benefit from the NRC. The commenter disagreed with the NRC's policy of imposing fees on these companies because the costs are associated with revised government decommissioning standards and fees would discourage voluntary decommissioning. The commenter stated that if the NRC decides to impose these fees, the fees should not be applied to sites currently in decommissioning.

Response. As a matter of policy, the NRC assesses part 170 fees under the IOAA, which allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. In addition, the Conference Committee Report accompanying OBRA–90 specifically states that the Conference Committee "* * * expects the NRC to continue to assess fees under the IOAA to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives" (136 Cong. Rec. H12692–3, daily ed. October 26, 1990). The NRC has received additional direction on this issue in the OMB Circular A–25, "User Charges," in which OMB states it is Federal policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The NRC abides by this direction in charging part 170 fees to recover the costs of providing special benefits to identifiable recipients. The NRC believes recovering the site-specific decommissioning costs associated with both licensed and unlicensed sites through part 170 fees is consistent with the full cost recovery provisions of IOAA and Circular A–25.

While the NRC acknowledges that decommissioning standards have been revised over the years, regulatory standards sometimes change for operating licensees, as well, in light of new safety or security issues or information. The NRC does not believe this is sufficient rationale for not imposing fees in these circumstances. Additionally, while the NRC is not providing the benefit of an operating license to sites in decommissioning—whether licensed or unlicensed—the NRC is incurring costs to provide services to these sites, and believes this justifies the imposition of fees to recover these costs. As such, the NRC does not believe it is appropriate to enact this policy but not apply it to existing sites in decommissioning, as the commenter requested.

However, NRC appreciates the concerns raised by this commenter. To address these concerns, NRC will delay the effective date of this requirement to one year after the effective date of the FY 2005 final fee rule. The NRC believes this later effective date will allow unlicensed sites to better plan for the imposition of these fees. This delayed effective date will also allow the owners/operators of unlicensed sites time to make as much progress as practicable in completing these decommissioning activities before the imposition of fees by the NRC. The NRC believes charging part 170 fees to unlicensed sites, but with sufficient notice before implementation, will appropriately implement the NRC's goal of enhancing the fairness and equity of its fee schedule while encouraging continued progress on meeting decommissioning standards.

4. Fees for Licensee-Specific Activities Resulting From Security Related Orders

Comment. One commenter suggested not amending part 170 to allow fees to be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties or other civil sanctions. This commenter stated that licensees are required to implement additional security requirements at their own cost, and that adding additional homeland security costs to the fee base could discourage licensees from voluntary implementation of technological advances or additional security measures beyond the scope of the orders.

Response. The NRC acknowledges the impact of these fees on the licensees. However, the NRC must comply with OBRA–90 and recover most of its budget, including homeland security costs, through fees to licensees. As such, the NRC must recover the costs of licensee-specific actions resulting from security-related orders through either parts 170 or 171 fees. The NRC believes it is more fair and appropriate to recover these costs through part 170 fees because the activities are licensee-specific and serve an identifiable beneficiary. By recovering the costs of licensee-specific activities resulting from orders through part 170 fees, as opposed to part 171 annual fees, the NRC will more fairly allocate the cost recovery of these activities amongst licensees. This is because part 170 fees will be charged to a licensee based on the actual time NRC spends ensuring compliance for that licensee, rather than spreading total industry costs evenly to all licensees. This will allow the NRC to recover more fees from licensees that use more NRC resources in complying with these orders.

The NRC also believes this change is important because the NRC's use of orders to impose additional requirements for safety or security reasons has recently increased. For example, subsequent to the September 11, 2001, terrorist attacks, the Commission has imposed security requirements on various classes of licensees through orders. These orders resulted in the NRC's review of licensee-specific amendments and other activities that normally would have been billable under part 170, except that they were associated with orders.

Given the changing regulatory environment and the extent of licensee-specific activities that are resulting from orders unrelated to civil penalties or other civil sanctions, the NRC is revising its regulations to allow for full cost recovery of these activities under part 170 from NRC licensees. The NRC is not changing cost recovery for the development of these orders or for hearings requested on these orders; these costs will continue to be recovered under part 171 (unless the hearing falls within the purview of 10 CFR 170.11(a)(2) addressing fees for Presidentially-directed national security programs).

C. Specific Part 171 Issues

1. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received three comments objecting to the large increase in the annual fees for uranium recovery licensees. These commenters stated that there continues to be a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from these services. Additionally, the commenters stated that the NRC needs to address the issue of decreasing numbers of uranium recovery licensees. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs.

The comments supported the continuation of the 2002 determination that the DOE must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. In addition, one commenter cited the dramatic recovery of the price of uranium and indicated that this may generate future requests for licensing actions. The commenter was concerned that the NRC may not possess sufficient experienced staff to process these requests. This commenter also noted a previous Commission comment which indicated the existence of a uranium recovery facility was in the public interest.

Response. The NRC acknowledges that uranium recovery annual fees increased by a large percentage (90 percent to 115 percent) from FY 2004 to FY 2005. However, the FY 2005 uranium recovery annual fee of $30,200 is still significantly lower than previous years. (For example, these fees ranged from approximately $82,000 to $132,000 in FY 2001, and $39,000 to $64,000 in FY 2003.) Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. Additionally, because annual fees must recover all fee class resources not recovered through part 170 fees, annual fees are impacted by the part 170 fees collected from that fee class.

In response to concerns regarding decreasing numbers of NRC licensees in light of more states becoming Agreement States, the NRC notes that budgeted resources providing support to Agreement States or their licensees are included in total surcharge costs, which are offset by funding provided by Congress. For example, if the NRC develops a rule or guidance document, or even potentially a database or other tracking system, that is associated with or otherwise benefits Agreement State licensees, the costs of these activities are prorated to the surcharge according to the percentage of licensees in that fee class in Agreement States (*e.g.*, if 50 percent of uranium recovery licensees are in Agreement States, 50 percent of these regulatory infrastructure costs would be included in the surcharge). Total surcharge costs are reduced by the fee relief (*i.e.*, direct appropriations from the General Treasury) provided by Congress. To address fairness and equity concerns associated with licensees paying for the cost of activities that do not directly benefit them, as noted previously, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. However, to the extent that this fee relief is insufficient to cover all surcharge costs, these remaining surcharge costs are spread to all licensees based on their percentage of the budget.

In FY 2005, $2.3 million of the $62.4 million in total surcharge costs was not covered by the 10 percent fee relief, and therefore is included in licensees' annual fees. Eighty-two percent (the percentage of the budget associated with reactors) of the $2.3 million in net surcharge costs is included in reactor annual fees, and the remainder is spread to all other licensees' annual fees. Accordingly, NRC's uranium recovery licensees are not generally burdened with the costs of regulating Agreement State licensees or any other costs not associated with uranium recovery licensees (only to the extent that a small portion of these costs are spread to all licensees through the net surcharge). In FY 2005, total surcharge costs allocated to the entire uranium recovery class are $8,600.

However, the NRC acknowledges that license fee classes with fewer licensees are more impacted by changes to the budget and changes to part 170 collections. The uranium recovery fee class was reduced by four licensees (two of which paid annual fees) in FY 2005 because regulatory responsibility for these licensees was transferred to the State of Utah in accordance with an Agreement under section 274 of the Atomic Energy Act (AEA) of 1954, as amended, effective August 16, 2004. This resulted in fewer NRC uranium recovery licensees (now six in total, including a license for the DOE) paying for the FY 2005 generic and other regulatory costs associated with the regulation of the NRC's uranium recovery licensees. Accordingly, annual fees increased for the NRC's uranium recovery licensees in FY 2005 because the fee class now has fewer licensees; however, the higher annual fees are not the result of NRC licensees paying for activities that support Agreement State licensees, as previously discussed. Because annual fees must recover budgeted resources for a fee class not recovered through part 170 fees, to the extent that part 170 fees do not completely recover the costs of budgeted resources for part 170 activities, these costs are included in annual fees. The NRC does note that the increases to hourly rates enacted through this rulemaking will enable the agency to recover more of the budgeted resources for licensee-specific activities, and once implemented, will reduce costs that must be recovered through annual fees.

With respect to the general comment that there is a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from these services, the NRC notes that the uranium recovery fees reflect the budgeted resources associated with the regulation of NRC's uranium recovery licensees. As previously described, the fee relief of 10 percent for FY 2005 covers almost all (with the exception of $2.3 million) of the budgeted resources associated with activities that do not directly benefit NRC licensees, and the total surcharge cost allocated to the entire uranium recovery class is $8,600 in FY 2005. The NRC must by statute assess annual fees to uranium recovery licensees to recover their budgeted costs not recovered through part 170 fees and other receipts. While the NRC acknowledges the previous Commission comment about the existence of a uranium recovery facility being in the public interest, this does not negate the NRC's legal obligation to collect fees to recover the costs of regulating uranium recovery facilities.

In response to the comment that the NRC may not possess sufficient experienced staff to process future licensing actions for uranium recovery licensees, the issue raised is outside the scope of this rulemaking. However, the NRC does consider market forces and expected future licensing activities in formulating its budget, and has a human resources program in place to address future agency skill needs.

Finally, the NRC notes that this final rule continues the policy of assessing the DOE one-half of all NRC budgeted costs attributed to generic/other

activities for the uranium recovery program.

2. Annual Fees for Fuel Facilities Licensees

Comment. One commenter expressed concern over the increase in annual fees for fuel facilities licensees. The comments discussed the unpredictability of estimating proposed fee increases, as well as that the NRC did not mention in the FY 2004 fee rule a one-time adjustment it had made to account for part 170 fees received for prior year activities (which decreased annual fees in FY 2004 for fuel facilities).

Response. The NRC appreciates the concerns raised about fee predictability and stability, and does strive to notify licensees as early as possible of proposed fee changes. While the one-time adjustment for the fuel facilities was discussed in the FY 2004 final fee rule (69 FR 22671; April 26, 2004), the NRC acknowledges that the rule did not fully explain the potential impacts of this adjustment. The NRC aims to more fully explain any such changes in the future.

Although the NRC understands that large fluctuations in fees are undesirable, the NRC must recover most of its budget to comply with OBRA–90, as amended. To do so, the NRC annually promulgates a rule establishing licensee fees. Because of concerns about annual fluctuations in these fees, the NRC announced in FY 1995 that annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated by rebaselining. Commission policy sets the maximum interval between rebaselined fee schedules at three years. Based on the change in the magnitude of the budget to be recovered through fees, the Commission determined that it was appropriate to rebaseline its part 171 annual fees in FY 2005. Rebaselining fees resulted in increased annual fees for fuel facilities compared to FY 2004 due in part to an increase in budgeted resources for FTE for fuel facilities licensing and inspection activities. (These resources may not be entirely recovered under part 170 because of factors such as the existing hourly rates, which do not account for the time direct FTE spend on training and other administrative activities, and because licensing resources spent on contested hearings are not generally recovered under part 170, in accordance with 170.11(a)(2).) A decrease in part 170 fees from this class also contributed to the annual fee increase. As discussed in the FY 2004 proposed fee rule, this decrease in part 170 revenue results partly from the one-time $2.1 million adjustment (increase) to part 170 revenue in FY 2004 to account for fuel facilities fees that were improperly coded (*i.e.*, costs associated with the Duke Cogema Stone and Webster application) and not factored into the fee calculations for FY 2001, FY 2002, and F 2003.

3. Increase in the Annual Fees for Some Materials Licensees

Comment. Two commenters strongly objected to the increase in the annual fees for some of the categories of the materials licenses. One commenter stated that the increase will have to be passed on to their customers which will place the licensee at a cost disadvantage in a very competitive environment.

Response. The NRC has addressed comments regarding the impact of fees on industry in previous fee rulemakings. The NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA–90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for each class of licensee reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned activity in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass the costs to its customers. Instead, the NRC has only considered the impacts that it is required to address by law.

Annual fees for materials users increased for certain fee categories for two reasons. First, materials users' annual fees include more budgeted resources for activities such as licensing and inspection (including some homeland security activities) in FY 2005 than in FY 2004. Second, the distribution of the materials users class resources to fee categories within this class was revised based on the biennial review of fees. As mentioned previously, the staff biennially reviews the average professional staff hours associated with processing applications and performing inspections. This review was performed in FY 2005, and indicated that processing time for most fee categories decreased or remained the same; however, processing time for some categories (*e.g.*, categories 3H, 3I, 9A, and 9B) increased since the last biennial review of fees, based in large part on the increased complexity of the submissions for these fee categories and the additional review required to assure the continued quality and adequacy of technical and regulatory determinations. Because the total budgeted resources for the materials users class are distributed to fee categories within that class based on these average review times, this resulted in more significantly increased annual fees for these categories of licensees.

D. Other Issues

1. Recovery of Security Costs

Comment. Several commenters strongly objected to the NRC collecting security-related costs from licensees. These commenters stated that homeland security issues related to nuclear power plants are part of the U.S. government's overall responsibility to protect its critical infrastructure, and hence these costs should be excluded from the fee structure and funded through the General Treasury. These commenters noted that the nuclear industry has already incurred significant security costs, and that these costs have not been reimbursed by the Federal government, unlike what has occurred for other industries. While the commenters stated that they recognized the public benefit of enhancing the already strong security at nuclear facilities, they thought it fundamentally unfair to require licensees to pay for the NRC's additional security-related oversight.

Because of concerns raised regarding homeland security activities and their cost recovery, these commenters urged the NRC to continue to engage the Department of Homeland Security and Congressional leaders to achieve a more equitable outcome for NRC licensees.

Response. The NRC appreciates the concerns raised by commenters regarding homeland security costs being funded through license fees. However, the NRC's required fee recovery is set by

statute and, therefore, is outside the scope of this rulemaking. To implement OBRA–90, as amended, the NRC must recover approximately 90 percent of its budget authority in FY 2005, less the amounts appropriated from the NWF. The total amount to be recovered for FY 2005 is approximately $540.7 million. After accounting for carryover and billing adjustments, the net amount to be recovered through fees is approximately $538 million. This required fee recovery includes homeland security budgeted resources.

Legislation has passed the House of Representatives which would remove some of the NRC's homeland security costs from the fee base. If Congress enacts such legislation, this would be reflected in future fee schedules.

2. NRC Budget

Comment. Some commenters stated that NRC fees should reflect NRC efficiencies and provided suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently, without impeding operational safety. Some commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process, as well as revised inspection, assessment and enforcement processes, should result in reduced fees. Some comments included suggestions to reallocate resources dedicated to the inspection of areas of plants that have little or no safety significance, to efforts to risk-inform regulations, review license renewal applications, and license new reactor designs.

Response. The NRC appreciates the importance of identifying and implementing process efficiencies on an ongoing basis. Every year, NRC offices conduct process reviews and rely on risk-informed practices to develop cost-efficient budgets that will allow them to achieve the NRC's Strategic Plan mission objectives. Nonetheless, the NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters? suggestions concerning the NRC's budget and the use of NRC resources. The NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressional budget process affords stakeholders and the public opportunities to provide views, including meetings, testimony, press briefings, etc. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA–90, the fees are established to recover the required percentage of the approved budget. However, the NRC will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

3. Fees Communication and Timing, Including Fee Increase Phase-Ins or Caps

Comment. Several commenters raised concerns that the timing of issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. To address this issue, commenters suggested that the NRC publish an estimate of fees for the following year, coincident with issuance of the proposed fee rule each year. The commenters recognized that while it would likely be impossible for the NRC to offer exact projections, the Commission should be able to develop reasonable estimates of the next year's fees. One commenter suggested phasing in fee increases over a longer period of time, and others similarly suggested the idea of a cap to fee increases. Another commenter requested that the proposed hourly rate increase be rescheduled until the offsetting annual fee reduction coincides with the increase.

Response. The NRC acknowledges the concerns raised by these commenters. As a matter of law (OBRA–90, as amended), the NRC must collect the statutorily mandated level of fees by the end of the fiscal year to which they are attributed, in this case September 30, 2005. However, because the NRC does not know in advance what its future budgets will be (*i.e.*, proposed budgets must be submitted to the OMB for its review before the President submits the budget to Congress for enactment), the NRC believes it is not practicable to project fees based on future estimated budgets. Even if the NRC were able to reasonably predict a future year total budget, the annual fee amounts are also highly sensitive to the allocation of these total resources to license fee classes, the numbers of licensees in a fee class, and the proportion of total class costs recovered from part 170. (Part 170 revenue from a fee class is particularly difficult to predict in advance, and more so for fee classes with small numbers of licensees, whose annual fees are even more sensitive to part 170 revenue estimates.) Estimating these factors even further in advance than the NRC currently does would likely lead to inaccurate future fee projections, which would be misleading to licensees.

With respect to the comment that requested that the proposed hourly rate increase be rescheduled until the offsetting annual fee reduction coincides with the increase, this is what will actually occur. While the higher hourly rates are being established in the FY 2005 final fee rule, licensees will not have to pay the bills reflecting these higher rates until FY 2006 (which begins October 1, 2005). The new hourly rates will not take effect until late in FY 2005, and licensees will not receive bills reflecting the new hourly rates until October 2005. The NRC will receive revenue from the higher hourly rates beginning approximately November 2005. The revenue from the higher hourly rates that the NRC receives in FY 2006 will be used to offset the required annual fee amount for licensees in FY 2006. Therefore, both the higher hourly rates and the annual fees reflecting the offset from the higher hourly rates will be paid by NRC applicants and licensees in the same fiscal year (FY 2006). During FY 2005, licensees paid part 170 fees reflecting the lower hourly rates, and hence the FY 2005 annual fees are offset by the lower hourly rates.

The NRC has considered requests to cap fee increases or phase them in over a longer period of time. In the FY 1999 proposed fee rule, the NRC solicited comments on the idea of a cap to fee increases (64 FR 15876; April 1, 1999). While some comments supported this proposal, others did not because they believed it would lead to some licensees subsidizing the costs of other licensees. The NRC did not adopt a fee increase cap in the FY 1999 final fee rule in light of fairness and equity concerns with this approach and a lack of overwhelming support from commenters (64 FR 31448; June 10, 1999). Upon subsequent evaluation, the NRC continues to believe that the legal and fairness concerns with these fee cap strategies or other phase-in approaches outweigh the benefits of enhanced fee stability. Given the requirements of OBRA–90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. The NRC's fees are based on the current year budgeted costs of activities benefitting the associated license fee classes, and hence reflect the best assessment of who should be paying for these costs. However, the NRC will continue to strive to issue its fee regulations as early in the fiscal year as is practicable to give

as much time as possible for licensees to plan for changes in fees.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2005 budget authority less the appropriations received from the NWF. The NRC's total budget authority for FY 2005 is $669.3 million, of which approximately $68.5 million has been appropriated from the NWF. Based on the 90 percent fee recovery requirement, the NRC must recover approximately $540.7 million in FY 2005 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2005 is $4.6 million less than the amount estimated for recovery in FY 2004.

The FY 2005 fee recovery amount is reduced by a $2.2 million carryover from additional collections in FY 2004 that were unanticipated at the time the final FY 2004 fee rule was published, and by an additional $0.5 million for billing adjustments (*i.e.*, for FY 2005 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2005 for FY 2004 invoices). This leaves approximately $538 million to be recovered in FY 2005 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $157.5 million will be recovered in FY 2005 from part 170 fees and other offsetting receipts. The NRC derived this estimate based on the previous four quarters of billing data for each license class, with adjustments to account for changes in the NRC's FY 2005 budget as appropriate. The remaining $380.5 million would be recovered through the part 171 annual fees, compared to $389.9 million for FY 2004.

The primary reason for the decrease in total fees for FY 2005 is that the NRC's fee recovery is 90 percent in FY 2005, compared to 92 percent in FY 2004. This fee recovery reduction is in accordance with the FY 2001 Energy and Water Development Appropriations Act. The decrease in the NRC's required fee recovery is sufficient to offset the increase of 1.5 percent in the NRC's non-NWF budget in FY 2005.

Table I summarizes the budget and fee recovery amounts for FY 2005.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2005

[Dollars in millions]

Total Budget Authority	$669.3
Less NWF	−68.5
Balance	$600.8
Fee Recovery Rate for FY 2005	[1] × 90.0%
Total Amount To Be Recovered for FY 2005	$540.7
Less Carryover from FY 2004	−2.2
Less Part 171 Billing Adjustments	
Unpaid FY 2005 Invoices (estimated)	2.7
Less Payments Received in FY 2005 for Prior Year Invoices (estimated)	−3.2
Subtotal	−0.5
Amount To Be Recovered Through Parts 170 and 171 Fees	$538.0
Less Estimated Part 170 Fees	−157.5
Part 171 Fee Collections Required	$380.5

[1] Percent.

The FY 2005 final fee rule is a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2005 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2005 final rule. For these licensees, payment is due on the effective date of the FY 2005 rule. Those materials licensees whose license anniversary date during FY 2005 falls before the effective date of the final FY 2005 rule will be billed for the annual fee during the anniversary month of the license at the FY 2004 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2005 rule will be billed for the annual fee at the FY 2005 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC has discontinued mailing the final fee rule to all licensees as a cost saving measure, in accordance with its FY 1998 announcement. Accordingly, the NRC does not plan to routinely mail the FY 2005 final fee rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of Financial Management, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees@nrc.gov*. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule, and will permanently be available at *http://www.access.gpo.gov*.

The NRC is amending 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is revising the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates and the results of the agency's biennial review of fees required by the CFOs Act of 1990. Additionally, the NRC is revising part 170 to provide for the assessment of full cost fees for licensee-specific activities

resulting from most orders and decommissioning activities associated with unlicensed sites; clarify that part 170 fee waivers need to be requested from, and granted by, the CFO in writing in certain instances; notify licensees that the NRC intends to apply its existing full cost recovery policy for project managers to license renewal project managers; and make minor administrative changes, including those to enhance consistency between the fee categories used in part 170 and part 171.

The amendments are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2005 direct program full time equivalents (FTEs) and the FY 2005 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The rate for the reactor program is $205 per hour ($296,782 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The rate for the materials program is $197 per hour ($285,336 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2005 proposed fee rule, the reactor program rate was $205 and the materials program rate was $198. The materials program rate decreased by one dollar between the FY 2005 proposed and final rules due to the movement of some budgeted resources from the materials program to the surcharge. In the FY 2004 final fee rule, the reactor and materials program rates were $157 and $156, respectively. The increase to the reactor and the materials program rates from FY 2004 is primarily due to the NRC's use of a revised estimate of the number of direct hours per FTE in calculating these rates. The recent Government-wide pay raise is another reason for the proposed increase in the hourly rates.

As described in further detail below, the NRC currently assumes 1,776 hours per direct FTE are available for direct program work, while the new hourly rate assumes 1,446 hours per direct FTE are available for direct program work. Because the NRC's hourly rates are calculated by dividing the total annual costs of a direct FTE by average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculation, the higher the hourly rates.

The NRC is revising its estimate of direct hours per FTE to more accurately reflect the NRC's costs of providing part 170 services, which will allow the NRC to more fully recover the costs of these services through part 170 fees, a result sought by several commenters as discussed earlier. Because costs not recovered under part 170 are recovered through part 171 annual fees, the increase in total part 170 fees (caused by the hourly rate increase) will result in a reduction to total annual fees of the same amount. As such, this hourly rate increase will shift some fee recovery from part 171 annual fees to part 170 fees for licensee-specific services. (As previously discussed, because the invoices reflecting these increased part 170 fees will not be paid by licensees until FY 2006—in light of the effective date of the final rule and the timing of the NRC's regular billing cycle—the reduction in annual fees from this change will not occur until FY 2006.)

Previously, the NRC used an estimate of 1,776 hours per FTE to calculate the reactor and materials program hourly rates, based on OMB Circular A–76, "Performance of Commercial Activities." However, this Circular provides assumptions to be used to estimate personnel costs for the competition of commercial activities, and does not provide guidance about assumptions to be used for purposes of fee calculation. (OMB's Circular A–25, "User Charges," also does not specifically address the number of hours to assume per FTE in calculating fees, but does emphasize that agency fees should reflect the full cost of providing services to identifiable beneficiaries.) The 1,776 estimate from Circular A–76 includes time for administrative, training, and other activities a direct program FTE may perform that, while relevant to consider for certain costing purposes, would more accurately be considered overhead. Therefore, this estimate should not be assumed to be "direct" time for purposes of calculating a rate per hour of direct activities, which is the intended purpose of the NRC's hourly rates. While the 1,776 estimate would be a useful fee calculation input were more detailed information not available, the NRC has been collecting more detailed information from its new time and labor system since November 2001, which is now the NRC's established source of data for employee work activities. The NRC has performed a review of its time and labor data, which indicates that 1,446 hours per FTE more accurately reflects the time expended by NRC program employees performing activities directly associated with the programmatic mission of the NRC. The 330 hours per year (1,776 minus 1,446) that a direct FTE performs in administrative activities will now be recovered in a similar manner to overhead, the costs of which are included in the hourly rate.

The NRC recognizes that the increase to the hourly rates is more significant than those hourly rate changes that have occurred in previous years. However, the NRC believes that this increase is justified in light of the review of the NRC's time and labor data, which showed that NRC direct employees spend, on average, 1,446 hours per year on activities directly associated with the programmatic mission of the NRC. The NRC believes that the use of 1,446 hours per FTE is more appropriate for the purpose of the NRC's fee calculation than other estimates of hours per FTE used for different agency financial purposes. By using an estimate of hours per FTE that reflects only direct staff time, the resulting hourly rates more accurately reflect the full cost of providing services under part 170. For this reason, the NRC believes that this estimate of hours per FTE is consistent with guidance provided in OMB Circular A–25 on recovering the full cost of services provided to identifiable recipients. This change also supports industry comments that consistently recommend that the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees.

Higher hourly rates will result in increased full cost fees for licensing and inspection activities, and increased materials flat fees for license applications. As previously noted, total part 171 annual fees will decrease by the same amount as the increase in total part 170 fees. This shift from part 171 to part 170 will be greater for those fee classes with a higher proportion of part 170 to part 171 work activities (*e.g.*, operating power reactors, uranium recovery and rare earth facilities). Because annual fees are adjusted to recover the remainder of the budgeted resources for a license fee class not recovered under part 170, the total estimated fees (parts 170 plus 171) recovered from a license fee class are the same regardless of the amount of the hourly rate, However, when implemented, higher hourly rates will result in some individual licensees paying less total fees than if this change were not enacted. This is true for those licensees for whom the NRC performs fewer hours of part 170 services than it does, on average, for a licensee in that class. Similarly, licensees for which the NRC performs more hours of part 170 services will pay more in total fees under the proposed higher hourly rates.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program. All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly based on the total number of direct FTEs for the program. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are recovered directly through either part 170 or 171 fees.

b. All non-program costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's costs.

This method results in the following costs, which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2005 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits	$150.5M	$38.9M
Overhead Salaries & Benefits, Program Travel and Other Support	77.5M	17.7M
Allocated Agency Management and Support	125.9M	31.3M
Subtotal	353.9M	87.9M
Less Offsetting Receipts	−0.0M	−0.0M
Total Budget Included in Hourly Rate	$353.9M	$87.9M
Program Direct FTEs	1,192.5	308.2
Rate per Direct FTE	$296,782	$285,336
Professional Hourly Rate (Rate per direct FTE divided by 1,446 hours)	$205	$197

As shown in Table II, dividing the $353.9 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1,192.5) results in a rate for the reactor program of $296,782 per FTE for FY 2005. The Direct FTE Hourly Rate for the reactor program will be $205 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($296,782) by the number of direct billable hours in one year (1,446 hours). Similarly, dividing the $87.9 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (308.2) results in a rate of $285,336 per FTE for FY 2005. The Direct FTE Hourly Rate for the materials program will be $197 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($285,336) by the number of direct billable hours in one year (1,446 hours).

2. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates and the results of the biennial review of part 170 fees required by the CFOs Act. To comply with the requirements of the CFOs Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2003 (68 FR 36714; June 18, 2003). Thus, the revised average professional staff hours in this final fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2003.

As a result of the biennial review, the licensing fees are based on the average professional staff hours that reflect an increase in average time for new license applications for five of the 33 materials program fee categories, a decrease in average time for eight fee categories, and the same average time for the remaining 20 fee categories. The average time for new license applications and amendments for export and import licenses remained the same for each of the five fee categories in §§ 170.21 and 170.31.

Although the biennial review indicated that processing times for most fee categories remained the same or decreased, the average processing times for some fee categories in §170.31 increased significantly as compared to the previous biennial review. The reasons for the increases are both administrative and technical. Administratively, several prior biennial reviews showed very small sample sizes of completed licensing actions in these categories; therefore, the NRC was reluctant to adjust fees based on the fluctuations that could result from small statistical samples. Thus, the hourly estimates on which these fees were based were legacies from many years ago. For the biennial review performed for the FY 2005 fee rule, a more meaningful sample size was reviewed, and therefore the new data were determined to be appropriate for including in the assessment of average processing times. A thorough review of the new data showed that the original fees were no longer representative of the complexity of the reviews and the amount of review time required to process the requests. Technically, program review practices have also changed in the past several years. The product vendors and device manufacturers are, in some cases, combining their submissions. This means that the NRC is reviewing more complex and substantial submittals, and that additional review is required to assure the continued quality and adequacy of technical and regulatory determinations. The NRC believes that the new license application fees in § 170.31, based on the most recent data, better reflect the resources associated with processing license applications than the prior year fees. Although these changes resulted in some significant fee increases, the NRC does note that the

affected fee categories are small in terms of the number of licensees that will be impacted.

The licensing fees for fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31, are based on the revised professional staff hours needed to process the licensing actions multiplied by the revised materials program professional hourly rate for FY 2005. As previously noted, the revised higher hourly rate of $197 for the materials program is a key reason for the increases in the revised licensing fees.

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the revised fee per registration is $620, compared to the current fee of $610. The revised fee is based on the current estimated number of registrants, current annual resource estimates for the program, and the FY 2005 materials program hourly rate. The next biennial review of the registration fee will be included in the FY 2007 fee rule; however, the registration fee may change in the FY 2006 fee rule if there is a change to the materials program FTE rate for FY 2006.

As compared to the FY 2005 proposed fee rule, a few of the licensing fees in § § 170.21 and 170.31 are slightly lower due to the decrease by one dollar in the materials program hourly rate between the FY 2005 proposed and final fee rules.

The amounts of the materials licensing "flat" fees are rounded as follows: fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this final rule.

3. Charging Fees for Licensee-Specific Activities Resulting From Most Orders

The NRC is amending §§ 170.21 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties or other civil sanctions. Currently, part 170 fees are not assessed for amendments or other licensee-specific activities resulting from the requirements of Commission orders. This is because in cases where the order proposes the imposition of a civil penalty or other civil sanctions, the assessment of additional costs could be viewed as augmenting the amount of the civil penalty and could discourage licensees from contesting enforcement actions. However, in recent years, the NRC's use of orders to impose additional requirements for safety or security reasons has increased. For example, subsequent to the September 11, 2001, terrorist attacks, the Commission imposed security requirements on various groups of licensees through orders. These orders resulted in the NRC's review of licensee-specific amendments and other activities that normally would have been billable under part 170, except that they were associated with orders.

Given the changing regulatory environment and the extent of licensee-specific activities that are resulting from orders unrelated to civil penalties or other civil sanctions, the NRC is revising its regulations to allow for full cost recovery of these activities under part 170 from NRC licensees. The NRC is not changing cost recovery for the development of these orders or for hearings requested on these orders; these costs will continue to be recovered under part 171 (unless the hearing falls within the purview of 10 CFR 170.11(a)(2) addressing fees for Presidentially-directed national security programs).

4. Charging Fees for Unlicensed Sites in Decommissioning

The NRC currently does not charge part 170 fees to owners or operators of unlicensed sites in decommissioning. However, the NRC does perform work related to the decommissioning of these sites that is recoverable under IOAA through part 170 fees because this work is associated with an identifiable beneficiary. These costs are currently recovered through either a surcharge that is included in NRC licensees? annual fees or through taxpayer-funded appropriations (*i.e.*, Department of Treasury's General Fund). Recovering the site-specific decommissioning costs associated with these unlicensed sites through part 170 fees is consistent with the full cost recovery provisions of IOAA and the OMB's guidance in Circular A–25, "User Charges." By recovering the costs of decommissioning activities from the owners or operators of these unlicensed sites, as NRC does from licensed sites, the NRC believes the fairness and equity of its fee schedule will be enhanced. Therefore, the NRC is adding a new category (14B) to 'Schedule of Materials Fees' at § 170.31 that will provide for the assessment of part 170 fees to recover the full cost of site-specific decommissioning activities for unlicensed sites. (The current Category 14 at §170.31 will be renumbered as Category 14A.) Section 170.2 will also be revised to expand the scope of part 170 to cover an owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

However, in light of concerns raised by a commenter on the FY 2005 proposed fee rule regarding charging part 170 fees to unlicensed sites in decommissioning, the NRC is providing that this change will not be implemented until one year from the effective date of the FY 2005 final fee rule. The NRC believes that this will provide sufficient notice for these unlicensed sites to plan for these costs. Additionally, the NRC believes this delayed effective date may encourage unlicensed sites to complete their decommissioning work as quickly as practicable because work performed by the NRC for these sites before the implementation of this provision will not be subject to part 170 fees.

5. Fee Waivers

Under § 170.11(a)(1)(iii), part 170 fees are not required for a report/request that has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations. The NRC is clarifying this section by stating that this fee exemption applies only when it is requested from, and granted by, the CFO in writing. While this is consistent with current practice in requesting and granting these fee waivers, the NRC believes this revision will enhance clear communication about implementation of this fee waiver provision.

6. Full Cost Recovery of Project Manager Time

The FY 1999 final fee rule (64 FR 31448; June 10, 1999) expanded the scope of part 170 fee assessments to include full cost recovery for project managers assigned to a specific plant or facility. Under this policy (§ 170.12(b)(iv)) most project managers' time, excluding leave and time spent on generic activities such as rulemaking, is recovered through part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned. The NRC will begin applying this policy to "license renewal" project managers as of the effective date of this final rule. Although the NRC does not currently apply this full cost recovery policy to license renewal project managers, this change does not require a modification to its regulations. Rather, given the increase in license renewal activities since 1999, when full cost recovery for

project managers was enacted, the NRC recognizes that the existing policy should also apply to license renewal project managers. However, because this is a change in the application of existing policy, the NRC is notifying licensees of this change through this final rule and will not implement it until the effective date of the final rule.

7. Administrative Amendments

The NRC is modifying the number or letter identifiers associated with fee categories listed in § 170.31, as well as making other minor administrative changes, so that the fee categories under part 170 are consistent with those used in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at § 171.16(d). While the fee categories are, for the most part, consistent between the fee tables at §§ 170.31 and 171.16(d), in some instances they are slightly different. This change will enhance the NRC's ability to track parts 170 and 171 fees for license categories and simplify communication to licensees about applicable fee categories. Additionally, the NRC is removing the last sentence of category 15A of § 170.31, which references that the category includes applications for export and import of radioactive waste, because the information contained therein is stated in the previous sentence.

In summary, the NRC is amending 10 CFR part 170 to—

1. Revise the reactor and materials programs hourly rates to better reflect the full cost of providing part 170 services;

2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFOs Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise §§ 170.21 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties or other civil sanctions;

4. Revise §§ 170.2 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activities associated with unlicensed sites in decommissioning being conducted under NRC oversight, effective one year from the effective date of the FY 2005 final fee rule;

5. Revise § 170.11 to clarify that certain fee waivers need to be requested from, and granted by, the CFO in writing;

6. Apply the existing policy at § 170.12 of full cost recovery for project managers to license renewal project managers; and

7. Make administrative changes to § 170.31, including those to enhance consistency in the identification of fee categories between parts 170 and 171.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The NRC is revising the annual fees for FY 2005 to reflect the FY 2005 budget and changes in the number of NRC licensees (including those resulting from the transfer of regulatory responsibility to Agreement States), eliminate 'size of reactor' as a reason for granting annual fee exemptions, and make certain administrative amendments. The amendments are as follow:

1. Annual Fees

The annual fees in §§ 171.15 and 171.16 will be revised for FY 2005 to recover approximately 90 percent of the NRC's FY 2005 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2005 is $380.5 million, compared to $389.9 million for FY 2004.

The NRC is establishing annual fees for FY 2005 using the "rebaselining" method. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 final fee rule (60 FR 32218; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 final fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 2004. Based on the change in the magnitude of the budget allocated to certain classes of licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year.

Rebaselining fees results in decreased annual fees compared to FY 2004 for five classes of licenses (operating power reactors, test and research reactors, spent fuel storage/reactor decommissioning, rare earth mills, and transportation), and increased annual fees for two classes (fuel facilities and uranium recovery). For the materials users class, two categories (sub-classes) of licenses will have decreased annual fees, two categories' annual fees remain unchanged, while the remainder will have increased annual fees. The annual fee for industrial users of nuclear material (Category 3P), which is the largest materials users category and includes nearly 1,700 of the NRC's approximately 4,500 materials licensees, will not change. Considering all fee classes and categories, the increases in annual fees range from approximately two percent for a master materials license to approximately 267 percent for registrations issued for device or product safety evaluations. The decreases in annual fees range from approximately four percent for operating power reactors to approximately 53 percent for rare earth mills.

Factors affecting the changes to the annual fee amounts include: adjustments in budgeted costs for the different classes of licenses; the reduction in the fee recovery rate from 92 percent for FY 2004 to 90 percent for FY 2005; the estimated part 170 collections for the various classes of licenses; the decrease in the number of licensees for certain categories of licenses; and the $2.2 million carryover from additional collections in FY 2004 that were unanticipated at the time the FY 2004 final rule was published (*i.e.*, this FY 2004 carryover was used to reduce the FY 2005 fees).

Annual fees changed for certain classes and categories of licensees between the FY 2005 proposed and final fee rules because of changes to part 170 revenue estimates (based on the latest billing data available) for certain license fee classes and a small increase in budgeted resources allocated to the surcharge. The changes in annual fees from the FY 2005 proposed to final fee rules range from a three percent decrease for the spent fuel/reactor decommissioning class to a nine percent increase for test and research reactors and uranium recovery facilities.

Table III shows the rebaselined annual fees for FY 2005 for a representative list of categories of licenses. The FY 2004 fee is also shown for comparative purposes.

TABLE III.—REBASELINED ANNUAL FEES FOR FY 2005

Class/category of licenses	FY 2004 annual fee	FY 2005 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,283,000	$3,115,000
Spent Fuel Storage/Reactor Decommissioning	203,000	159,000
Test and Research Reactors (Nonpower Reactors)	62,500	59,500
High Enriched Uranium Fuel Facility	4,573,000	5,449,000
Low Enriched Uranium Fuel Facility	1,533,000	1,632,000
UF_6 Conversion Facility	657,000	699,000
Conventional Mills	14,500	30,200
Transportation:		
Users/Fabricators	91,300	80,900
Users Only	7,400	4,300
Typical Materials Users:		
Radiographers	11,900	12,800
Well Loggers	4,600	4,100
Gauge Users (Category 3P)	2,500	2,500
Broad Scope Medical	25,000	27,300

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Development Appropriations Act, which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2005 will be reduced by approximately $60.1 million. The total FY 2005 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table IV. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE IV.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2005 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$10.0
b. Agreement State oversight	8.2
c. Activities for unlicensed sites (includes decommissioning costs associated with unlicensed sites, formerly referred to as site decommissioning management plan activities not recovered under part 170; also includes activities associated with unregistered general licensees)	3.5
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	8.9
b. Licensing and inspection activities associated with other Federal agencies	1.4
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.9
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States [1]	13.9
b. Generic decommissioning/reclamation (except those related to power reactors)	10.5
Total surcharge costs	62.4
Less 10 percent of NRC's FY 2005 total budget (less NWF)	−60.1
Total Surcharge Costs to be Recovered	2.3

[1] This estimate includes the costs of homeland security activities associated with sources in Agreement States, even though regulatory authority remains with the NRC for these activities. However, fees are not assessed to sources in Agreement States for these activities, therefore these costs are included in this surcharge category.

As shown in Table IV, $2.3 million is the total surcharge cost allocated to the various classes of licenses for FY 2005 (*i.e.*, that portion of the total surcharge not covered by the NRC's 10 percent fee relief). The NRC will continue to allocate these surcharge costs to each class of licenses based on the percent of the budget for that fee class compared to the NRC's total budget. The surcharge costs allocated to each class will be included in the annual fee assessed to each licensee. The FY 2005 surcharge costs allocated to each class of licenses are shown in Table V. Separately, the NRC will continue to allocate the low-level waste (LLW) surcharge costs based on the volume of LLW disposal of certain classes of licenses. For FY 2005, the LLW surcharge costs are $2.8 million. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge $M
	Percent	$M	Percent	$M	
Operating Power Reactors	74	2.1	82.5	1.9	4.0
Spent Fuel Storage/Reactor Decomm	.....	.....	4.7	0.1	0.1
Nonpower Reactors	.....	.....	0.1	0	0
Fuel Facilities	8	0.2	7.2	0.2	0.4
Materials Users	18	0.5	4.0	0.1	0.6
Transportation	.....	.....	1.0	0	0
Rare Earth Facilities	.....	.....	0.2	0	0
Uranium Recovery	.....	.....	0.4	0	0
Total Surcharge	100	2.8	100.0	2.3	5.1

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.nrc.gov/reading-rm/adams.html*. For a period of 90 days after the effective date of this final rule, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

a. *Fuel Facilities.* The FY 2005 budgeted cost to be recovered in annual fees assessment to the fuel facility class of licenses is approximately $24.1 million compared to $21.6 million in FY 2004. The annual fee increase is partly attributable to the decrease in estimated part 170 revenue for the fuel facility class compared to FY 2004. This FY 2005 decrease results partly from part 170 fuel facilities' revenue in FY 2004 including a one-time $2.1 million adjustment (increase) for revenue to account for fuel facilities fees that were improperly coded (*i.e.*, costs associated with the Duke Cogema Stone and Webster application) and not factored into the fee calculations for FY 2001, FY 2002, and FY 2003, as discussed in the FY 2004 final fee rule. The annual fee increase is also due to an increase in budgeted resources for FTE for fuel facilities licensing and inspection activities. (These resources may not be entirely recovered under part 170 because of factors such as the existing hourly rates, which do not account for the time direct FTE spend on administrative activities, and because licensing resources spent on contested hearings are not generally recovered under part 170, in accordance with 170.11(a)(2).) The annual fees are allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses, including the new subclass, are summarized in Table VI.

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors (in percent)	
		Safety	Safeguards
High Enriched Uranium Fuel	2	101 (38.0)	86 (58.1)
Uranium Enrichment	2	70 (26.3)	34 (23.0)

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES—Continued

Facility type	Number of facilities	Effort factors (in percent)	
		Safety	Safeguards
Low Enriched Uranium Fuel	3	66 (24.8)	18 (12.2)
UF_6 Conversion	1	12 (4.5)	0 (0)
Limited Operations Facility	1	8 (3.0)	3 (2.0)
Others	2	9 (3.4)	7 (4.7)

Applying these factors to the safety, safeguards, and surcharge components of the $24.1 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the categories of this class summarized in Table VII.

TABLE VII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2005 annual fee
High Enriched Uranium Fuel	$5,449,000
Uranium Enrichment	3,031,000
Low Enriched Uranium	1,632,000
UF_6 Conversion	699,000
Limited Operations Facility	641,000
Others	466,000

b. Uranium Recovery Facilities. The FY 2005 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $701,810. Approximately $551,000 of this amount will be assessed to DOE. The remaining $151,000 will be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities. The annual fees for these facilities increased from FY 2004 to FY 2005 due to a slight increase in budgeted resources for this license fee class, and because the NRC estimates that a smaller proportion of these resources will be recovered under part 170. As previously discussed, another reason for the increase in annual fees in FY 2005 is that the uranium recovery fee class was reduced by four licensees (two of which paid annual fees) because regulatory responsibility for these licensees was transferred to the State of Utah in accordance with an Agreement under Section 274 of the AEA of 1954, as amended, effective August 16, 2004. This resulted in fewer NRC uranium recovery licensees paying for the FY 2005 generic and other regulatory costs associated with the regulation of the NRC's uranium recovery licensees.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This will result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 50 percent of the surcharge and generic/other costs are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$399,471
50 percent of generic/other uranium recovery budgeted costs	146,890
50 percent of uranium recovery surcharge	4,280
Total Annual Fee Amount for DOE	550,640
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50 percent of generic/other uranium recovery budgeted costs	146,890
50 percent of uranium recovery surcharge	4,280
Total Annual Fee Amount for Title II Specific Licenses	151,170

The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to equally weight the effort levels for each category of uranium recovery facilities, in accordance with the NRC's FY 2005 budgeted activities. It has also been revised to reflect two fewer uranium recovery facilities, in light of the fact that regulatory responsibility for these two facilities has been transferred to Utah (see discussion under "Agreement State Activities" below). However, consistent with the methodology established in the FY 1995 fee rule (60 FR 32218; June 20, 1995), the approach for establishing part 171 annual fees for Title II uranium recovery licensees has not changed, and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (*e.g.*, rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements; and

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and

safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various categories of specifically licensed Title II uranium recovery licensees are as follows:

TABLE VIII.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Category weight	Level of benefit total weight	
			Value	Percent
Class I (conventional mills)	1	800	800	20
Class II (solution mining)	3	800	2,400	60
11e.(2) disposal	0	0	0	0
11e.(2) disposal incidental to existing tailings sites	1	800	800	20

Applying these factors to the approximately $151,000 in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees:

TABLE IX.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	FY 2005 annual fee
Class I (conventional mills)	$30,200
Class II (solution mining)	30,200
11e.(2) disposal	N/A
11e.(2) disposal incidental to existing tailings sites	30,200

Note because there are no longer any 11e.(2) disposal facilities under the NRC's regulatory jurisdiction, the NRC has not allocated any budgeted resources for these facilities, and therefore has not established an annual fee for this fee category. If NRC issues a license for this fee category in the future, then the Commission will establish the appropriate annual fee by rulemaking.

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2005 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2005 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

c. *Operating Power Reactors.* The approximately $311.6 million in budgeted costs to be recovered through FY 2005 annual fees assessed to the power reactor class, including budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2005 annual fee of $2,966,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2005 spent fuel storage/reactor decommissioning annual fee of $159,000. This results in a total FY 2005 annual fee of $3,115,000 for each power reactor licensed to operate. While budgeted resources for power reactors increased somewhat in FY 2005, annual fees will decrease because the NRC estimates that it will collect more of these resources through part 170 fees to power reactors.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2005, budgeted costs of approximately $19.4 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs are divided equally among the 122 licensees (with the exception of a new license issued on November 30, 2004, which will pay an 83 percent prorated annual fee), resulting in a FY 2005 annual fee of $159,000 per licensee. Annual fees will decrease for these licensees due to a reduction in budgeted resources for the spent fuel storage/reactor decommissioning fee class compared to FY 2004, and an increase in projected fee recovery from part 170 fees for this license fee class.

e. *Test and Research Reactors (Nonpower Reactors).* Approximately $238,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2005. This amount is divided equally among the four test and research reactors subject to annual fees. This results in a FY 2005 annual fee of $59,500 for each licensee. While budgeted resources for test and research reactors increase in FY 2005, annual fees will decrease due to a projected increase in the proportion of these resources recovered through part 170 fees to test and research reactors.

f. *Rare Earth Facilities.* The FY 2005 budgeted costs of $73,700 for rare earth facilities to be recovered through annual fees will be assessed to the one licensee who has a specific license for receipt and processing of source material, resulting in a FY 2005 annual fee of $73,700. While total budgeted resources for the rare earth fee class increase in FY 2005, this increase is due to licensee-specific activities, the costs of which will be recovered under part 170. The annual fee for the operating rare earth facility will decrease due to a slight decrease in generic activities performed for this license fee class compared to FY 2004.

g. *Materials Users.* To equitably and fairly allocate the $26 million in FY 2005 budgeted costs to be recovered in annual fees assessed to the approximately 4,500 diverse materials users and registrants, the NRC has continued to base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. Changes in FY 2005 annual fees for categories of licensees within the materials class reflect not only changes in budgeted resources for the materials class of licensees, but also changes in estimates of average professional staff time for materials users license applications and inspections, derived from the biennial review performed for the FY 2005 fee rule. (Large percentage increases in certain materials users fee categories, *e.g.*, 3H, 3I, 9A, and 9B, are

the result of significant changes to these average professional staff time estimates, as discussed previously.) The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant x [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier x (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $20.9 million in general costs and is 1.27 for FY 2005. The inspection multiplier is the multiple necessary to recover approximately $4.5 million in inspection costs for FY 2005, and is 1.08 for FY 2005. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2005, approximately $36,000 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC medical use licenses.

The annual fee assessed to each licensee also includes a share of the $92,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $507,000 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in § 171.16(d). Because the budgeted resources for this class of licensees increased in FY 2005, annual fees will increase for most of the fee categories in this class.

h. *Transportation.* Of the approximately $4.3 million in FY 2005 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.1 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.2 million, approximately 16 percent is allocated to the 84 quality assurance plans authorizing use only and the 35 quality assurance plans authorizing use and design/fabrication. The remaining 84 percent is allocated only to the 35 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of $4,300 for each of the holders of quality assurance plans that authorize use only, and an annual fee of $80,900 for each of the holders of quality assurance plans that authorize use and design/fabrication. Fees will decrease for transportation licensees in FY 2005 due to a reduction in budgeted resources allocated to this fee class compared to FY 2004.

2. Small Entity Annual Fees

The NRC stated in the FY 2001 final fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFOs Act. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2005. The revision to the small entity fees in FY 2000 (65 FR 36946; June 12, 2000), was based on the 25 percent increase in average total fees assessed to other materials licensees in selected categories (those categories that include a number of small entities) since the small entity fees were first established, and changes that had occurred in the fee structure for materials licensees over time. While fees for many of these selected categories of materials licensees will increase in FY 2005 compared to FY 2004, these fees are still lower, on average, than those charged in FY 2000, when small entity fees were last revised.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees from FY 2000 to FY 2005, on average, for those categories of materials licensees that contain a number of small entities, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2005. The NRC plans to re-examine the small entity fees again in FY 2007.

3. Agreement State Activities

On August 10, 2004, the NRC approved an Agreement with the State of Utah under Section 274 of the AEA of 1954, as amended. This Agreement transferred to the State the Commission's regulatory responsibility for uranium mills and mill tailings sites. This Agreement became effective August 16, 2004. Utah previously had become an Agreement State for certain other categories of materials, effective April 1, 1984. This Agreement was amended to include commercial low-level waste disposal responsibilities, effective May 9, 1990.

As a result of this Agreement, four former NRC uranium recovery licensees are now Utah licensees, two of which are uranium mills that are in decommissioning and reclamation. Because NRC does not charge fees to Agreement States or their licensees, the NRC will not collect fees in FY 2005 or thereafter for these four former NRC licensees. (The NRC did not collect annual fees for the mills in decommissioning while under the NRC's regulatory authority, because licensees in decommissioning, including uranium recovery licensees, are exempt from annual fees.) The costs of Agreement State regulatory support and oversight activities for Utah, as for any other Agreement State, would be recovered through the surcharge, consistent with existing fee policy.

4. Fee Waivers

The NRC is modifying § 171.11(c) to eliminate 'size of the reactor' as a consideration in evaluating annual fee exemption requests. In the Statement of Consideration in the 1986 final fee rule (51 FR 33227; September 18, 1986), the Commission decided against determining its fees based on the size of the reactor because it found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Because it was not the Commission's intent to issue a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it added an annual fee exemption provision which takes reactor size, age, and other relevant factors into consideration.

However, none of these smaller reactors are still licensed to operate. The NRC has not issued waivers on the basis of size for several years. Moreover, the NRC streamlined its fee program in the FY 1995 final fee rule (60 FR 32218; June 20, 1995) by establishing a uniform annual fee for power reactors, based on an analysis that showed that the difference in fees resulting from a breakdown of reactors into different fee categories was small relative to the amount of the annual fee per reactor. Therefore, the NRC believes that the current reference to 'size of the reactor' in § 171.11(c), as a consideration in evaluating annual fee exemption

requests, is no longer needed. No other class of licensee contains an exemption provision based on size.

5. Administrative Amendments

The NRC is eliminating reference to specific facility names under Category 1.A of the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by the NRC' in § 171.16. This is an administrative change that is being made to streamline the fee schedule because the listing of individual facilities within a fee category is not necessary to identify license fee amounts. Given this change, a licensee within Category 1.A will determine its annual fee amount by the fee subcategory assigned to its license, as is the practice for other licensees.

Additionally, the NRC is modifying §§ 171.15(d)(1)(ii) and 171.16(e)(2) to clarify that activities comprising the annual fee surcharge include activities associated with unlicensed sites and unregistered general licensees. Currently, these paragraphs state that complex materials site decommissioning activities not covered under part 170 are included in the surcharge. Because this surcharge category also includes part 171, or generic costs associated with these decommissioning sites, the NRC is eliminating the phrase, 'not covered under part 170.' (Note that once the regulatory revision to charge unlicensed sites in decommissioning, as previously discussed, is implemented, this surcharge category will not include part 170 activities associated with these sites.) In addition, activities associated with unregistered general licensees are included in this surcharge category.

Finally, the NRC is including, for each fee subcategory listed in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at § 171.16(d), a unique number or letter identifier, and minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171. The changes will enhance the NRC's ability to track part 170 and part 171 fees for license categories and simplify communication to licensees about applicable fee categories.

In summary, the NRC has—

1. Established rebaselined annual fees for FY 2005;

2. Retained the current reduced fees for small entities;

3. Adjusted the annual fees to reflect changes in Agreement State activities;

4. Modified § 171.11 to eliminate 'size of reactor' as a consideration in evaluating annual fee exemption requests; and

5. Eliminated reference to specific facility names under Category 1.A of § 171.16, revised §§ 171.15 and 171.16 to clarify the activities that comprise the annual fee surcharge, and make other minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2005 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed under Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974), and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY

2005. The NRC's fee recovery amount for FY 2005 is 90 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2005 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 90 percent of the Commission's FY 2005 budget of $669.3 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high-level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission. in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 90 percent of its FY 2005 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2005. The final rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2005.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of, or additions to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. In § 170.2, paragraph (t) is added to read as follows:

§ 170.2 Scope.

* * * * *

(t) An owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

■ 3. In § 170.11, paragraphs (a)(1)(iii)(A)(*1*) and (*2*) are revised and paragraph *(3)* is added to read as follows:

§ 170.11 Exemptions.

(a) * * *
(1) * * *
(iii) * * *
(A) * * *

(1) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (*e.g.,* rules, regulations, guides and policy statements);

(2) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(*1*) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned; and

(3) The fee exemption is requested in writing to the Chief Financial Officer in accordance with 10 CFR 170.5, and the Chief Financial Officer grants this request in writing.

* * * * *

■ 4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities): $205 per hour.

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities): $197 per hour.

■ 5. In § 170.21, Category K in the table and footnote 1 are revised, and footnote 4 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production and utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment	$12,800
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license, or amendment	7,500
3. Application for export of components requiring only the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment	2,400
4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment	1,600
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Amendment	300
* * * * * * *	

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

* * * * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

■ 6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium)	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations	Full Cost.
(b) All Others	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application	$910.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A.[4]	
Application	$1,800.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Class I facilities [4]	Full Cost.
(b) Class II facilities [4]	Full Cost.
(c) Other facilities [4]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4).	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2).	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$220.
C. All other source material licenses:	
Application	$7,800.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$9,200.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$3,500.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$4,700.
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$3,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$2,300.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$4,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$11,000.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$13,500.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$8,000.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,400.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$810.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$7,800.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$3,100.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$3,500.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	$3,200.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,100.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Registration	$620.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,400.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$3,600.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$1,300.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$15,700.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$8,600.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,200.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,100.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$450.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$19,300.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$19,300.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$2,200.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$750.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Spent Fuel, High-Level Waste, and plutonium air packages	
Licensing and inspection	Full Cost.
2. Other Casks	
Licensing and inspection	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$5,200.
Inspections	Full Cost.
2. Users.	
Application	$5,200.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices):	
Licensing and inspection	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
Inspections	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed. Part 170 fees for these activities will not be charged until (insert date 1 year from effective date of final rule).	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite.	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment	$12,800.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes application for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.	
Application—new license, or amendment	$7,500.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment	$2,400.
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license, or amendment	$1,600.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Amendment	$300.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,800.
17. Master materials licenses of broad scope issued to Government agencies	[5] N/A
18. Department of Energy	
A. Certificates of Compliance	[5] N/A
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	[5] N/A

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession only licenses; issuance of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category will apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 70.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] The NRC does not charge part 170 fees to Federal agencies, per 31 U.S.C. 9701.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 7. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

§ 171.11 [Amended]

■ 8. Section 171.11 is amended by removing paragraph (c)(2), and redesignating paragraphs (c)(3), (c)(4), and (c)(5) as paragraphs (c)(2), (c)(3), and(c)(4), respectively.

■ 9. In § 171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2005 annual fee for each operating power reactor which must be collected by September 30, 2005, is $3,115,000.

(2) The FY 2005 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2005 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(I) and (ii) of this section. The activities comprising the FY 2005 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2005 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors (*e.g.*, updating part 50 of this chapter, or operating the Incident Response Center). The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2005 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel onsite and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $159,000.

(2) The FY 2005 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2005 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2005 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2005 surcharge are as follows:

(i) Low-level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, decommissioning activities for unlicensed sites, and activities for unregistered general licensees); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (*e.g.*, reviews and inspections conducted of nonprofit

educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

(2) The total FY 2005 surcharge allocated to the operating power reactor class of licenses is $4 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2005 operating power reactor surcharge to be assessed to each operating power reactor is approximately $38,100. This amount is calculated by dividing the total operating power reactor surcharge ($4 million) by the number of operating power reactors (104).

(3) The FY 2005 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $107,200. The FY 2005 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $880. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2005 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$59,500.
Test reactor—$59,500.

■ 10. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small governmental jurisdictions (Including publicly supported educational institutions) (population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's Web site at *http://www.nrc.gov*. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2005 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2005 surcharge are shown for convenience in paragraph (e) of this section. The FY 2005 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium)	$5,449,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel	1,632,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations	641,000
(b) All Others	466,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	2,100
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	5,700
E. Licenses or certificates for the operation of a uranium enrichment facility	3,031,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	699,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Class I facilities [4]	30,200
(b) Class II facilities [4]	30,200
(c) Other facilities [4]	73,700
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	30,200
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	750
C. All other source material licenses	13,400
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	24,700
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	8,200
C. Licenses issued under §§32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §171.11(a)(1). These licenses are covered by fee under Category 3D	10,200
D. Licenses and approvals issued under §§32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under §171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	6,100
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	4,300
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	7,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	26,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	18,300
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	11,100
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,800
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,700

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	14,700
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	6,100
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4A, 4B, and 4C	6,600
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,800
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	25,100
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	13,700
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	27,300
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	5,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,600
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	24,600
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	24,600
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,800
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	960
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	80,900
2. Users	4,300
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite.	
A. Licenses for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). This category includes licenses for export and import of radioactive waste	[8] N/A
B. Licenses for export or import of nuclear material, radioactive waste, requiring Executive Branch review, but not Commission review. This category includes licenses for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc	[8] N/A
C. Licenses for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances	0N/A[8]
D. Licenses for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes licenses for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures	[8] N/A
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	251,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,097,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	551,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2004, and permanently ceased licensed activities entirely by September 30, 2004. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.*, human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses (*e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; decommissioning activities for unlicensed sites; and activities for unregistered general licensees); and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (*e.g.*, reviews and inspections of nonprofit educational

institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 6th day of May, 2005.

For the Nuclear Regulatory Commission.

Peter J. Rabideau,

Acting Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Final Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*), requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2005 is approximately $540.7 million.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2005. Rebaselining fees will result in decreased annual fees for the majority of the fee classes of licensees. However, annual fees will increase for other classes including most materials licensees in the materials users class.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2005 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 26 percent of these licensees (approximately 1,200 licensees for FY 2004) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and

continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC examined the small entity fees again in FY 2003 (68 FR 36717; June 18, 2003), and determined that a change was not warranted to the small entity fees established in FY 2003. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFOs Act.

Accordingly, the NRC has re-examined the small entity fees for FY 2005, and does not believe that a change to the small entity fees was warranted. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees from FY 2000 to FY 2005, on average, for those categories of materials licensees that contain a number of small entities, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2005. The NRC plans to re-examine the small entity fees again in FY 2007.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2005.

Attachment 1 to Appendix A—U. S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2005

Contents

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2005 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2005 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook,"

NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees based on employment during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of less than 50,000;

(5) *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (*i.e.*, not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (*i.e.*, not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16(c), the NRC has established two tiers of fees for licensees that qualify as a small entity under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small business not engaged in manufacturing and small not-for-profit organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7554, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity Form 526

(1) File a separate NRC Form 526 for each annual fee invoice received.

(2) Complete all items on NRC Form 526, as follows:

a. Enter the license number and invoice number exactly as they appear on the annual fee invoice.

b. Enter the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) if known.

c. Enter the licensee's name and address as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license must be submitted to the respective licensing staff in the NRC's regional or headquarters offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(i) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(ii) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(iii) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority (if included in gross or total income), proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(iv) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $2,300 or $500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a "possession only" license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration." This means that the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1,150 or $250 for each fee category billed (instead of the full small entity annual fee of $2,300 or $500).

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 249

Senior Farmers' Market Nutrition Program Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 249

RIN 0584–AD35

Senior Farmers' Market Nutrition Program Regulations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the provision of the Farm Security and Rural Investment Act of 2002 that gives the Department of Agriculture the authority to promulgate regulations for the operation and administration of the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs; and to develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

DATES: To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before July 25, 2005.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.
- *Web site:* Go to *http://www.fns.usda.gov/wic.* Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- E-Mail: Send comments to *WICHQ-SFPD@fns.usda.gov.* Include "Docket ID Number 0584–AD35, SFMNP Proposed Rule," in the subject line of the message.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FNS may also make the comments publicly available by posting a copy of all comments on the FNS Web site at *http://www.fns.usda.gov/wic.*

FOR FURTHER INFORMATION CONTACT: Debra Whitford or Donna Hines, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia, 22302, (703) 305–2746, OR *Debbie.Whitford@fns.usda.gov*, or *Donna.Hines@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Economic Impact Analysis was developed for the SFMNP Proposed Rule. A complete copy of the Impact Analysis is available by contacting FNS as indicated in the **ADDRESSES** section of this Preamble.

In summary, this analysis concludes that the proposed rule to establish the SFMNP is not likely to have a significant impact on the nutritional health of seniors, nor is it likely to have a substantial impact on the market for agricultural commodities, farmers, farmers' markets, community supported agriculture programs (CSAs), or roadside stands without additional program funding. While some alternatives to the proposed rule (set forth in the complete Regulatory Economic Impact Analysis) may increase the number of eligible seniors served or the number of SFMNP recipients, the SFMNP at its authorized funding level will still have minimal impact on the constituencies the program intends to serve. The current fiscal situation of the States further impedes possible program growth, as States may be unable to contribute their own funds for expansion. However, analysis undertaken by FNS indicates that the pilot program has been beneficial in areas where the SFMNP now operates. The proposed rule does allow for future growth, should additional funding be made available.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Eric Bost, Under Secretary of Agriculture for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this proposed rulemaking are applicable to all State and local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs, regardless of their size or of the volume of SFMNP business they conduct.

Public Law 104–4, Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of the 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, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The Senior Farmers' Market Nutrition Program (SFMNP) is listed in the Catalog of Federal Domestic Assistance under No. 10.576. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the preamble of the final rule, which will be promulgated once the comment period for this proposed rule has closed. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted. In the Senior Farmers' Market Nutrition Program, the administrative procedures are as follows: (1) Local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs—State agency hearing procedures issued pursuant to 7 CFR 249.16; (2) Applicants and recipients—State agency hearing procedures pursuant to 7 CFR 249.16; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 249.17—administrative appeal in accordance with 7 CFR 249.16, and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SFMNP recipients, FNS has determined that none of the provisions in this rule have a discernible impact on minorities, women, or persons with disabilities that are likely to result in inequitable treatment. FNS specifically prohibits the State agencies, and their cooperators, that administer the SFMNP from engaging in actions that discriminate against any individual in any of the protected classes (*see* proposed § 249.7 for the nondiscrimination policy in the SFMNP). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the SFMNP regulations as proposed at 7 CFR 249.7.

Paperwork Reduction Act (60-Day Notice)

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS is submitting for public comment the new information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by July 25, 2005.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Debra R. Whitford at the above address.

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 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Senior Farmers' Market Nutrition Program.

OMB Number: To be assigned.

Expiration Date: Not applicable.

Type of Request: New information collection (new program).

Abstract: This proposed rule implements Section 4402 of the Farm Security and Rural Investment Act of 2002 that gives the Department of Agriculture the authority to promulgate regulations for the operation and administration of the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to provide fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; to increase the consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs, and to develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

1. Reporting

Estimated Number of Respondents: 904,088.

Respondents include State agencies, local agencies, recipients, and authorized SFMNP outlets (farmers, farmers' markets, roadside stands, and community supported agriculture (CSA) programs).

Estimated Average Number of Responses per Respondent: 1.

Estimated Time per Response: .26 hours.

Estimated Total Annual Burden on Respondents: 235,153 hours.

2. Recordkeeping

Estimated Number of Recordkeepings: 282.

Respondents include State agencies, local agencies, SFMNP recipients, and authorized SFMNP outlets (farmers, farmers' markets, roadside stands, and community supported agriculture (CSA) programs).

Estimated Average Number of Recordkeepings per Respondent: 1.

Estimated Time Per Recordkeeping: 8 hours.

Estimated Total Annual Burden on Respondents: 2,256 hours.

3. Total Annual Reporting/ Recordkeeping Requirements

237,409 hours.

Government Paperwork Elimination Act Compliance

FNS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

SFMNP—FY 2001

USDA's Commodity Credit Corporation (CCC) established the Senior Farmers' Market Nutrition Program (SFMNP) in November 2000 as a pilot program (65 FR 65825, Nov. 2, 2000). Under the program, CCC made grants to State agencies and Indian tribal governments on a competitive basis. The grants were to be used to provide low-income seniors with coupons they could exchange for eligible foods at farmers' markets, roadside stands, and community supported agriculture programs. Eligible foods were defined as fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs. Grant funds could be used only to support the costs of the foods provided under the program; no administrative funding was available. Because of its prior experience and expertise in the administration of the WIC Farmers' Market Nutrition Program (a similar program that provides farmers' market coupons to participants in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC)), the Food and Nutrition Service evaluated the grant applications and administered the SFMNP on behalf of CCC in its pilot year.

From the inception of the program, the purposes of the SFMNP have been to: (1) Provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; (2) increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs; and (3) develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

A total of $15 million was made available for the pilot SFMNP grants for a one-year period ending December 31, 2001. The opportunity to submit grant applications for the SFMNP pilot was announced as a **Federal Register** Notice on November 2, 2000 (65 FR 65825). This Notice set out the basic requirements for the grant application as well as the evaluation criteria against which each application would be reviewed and scored. An evaluation panel made up of staff from both CCC and FNS reviewed the applications that were received. The initial competitive grant process resulted in awards to 30 States, 5 Indian tribal governments, and the District of Columbia. These grants ranged in amounts from $9,000 to $1.2 million.

Funds for the pilot program in Fiscal Year (FY) 2001 were made available pursuant to the CCC Charter Act ("the Act"). Section 5(e) of the Act (15 U.S.C. 714c(e)) authorizes CCC to use its resources to "[i]ncrease the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities."

During the 2001 market/harvest season, nearly 420,000 low-income seniors received coupons that were accepted by 8,500 farmers through 1,200 farmers' markets, nearly 900 roadside stands, and 49 community supported agriculture programs. For the pilot year, individual coupon allotments ranged from $10 to $540, with a median value of $40 per recipient per season. Close to 85 percent of the total grant funds awarded were expended for the purchase of eligible fruits, vegetables, and herbs.

SFMNP—FY 2002 Through 2004

The Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2002 (Pub. L. 107–76) provided $10 million from the Department's Commodity Assistance Program account to continue the SFMNP for a second year. An additional $5 million was provided from CCC funds by Section 4402 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill), Pub. L. 107–171 (7 U.S.C. 3007). The Farm Bill also authorized the SFMNP for FY 2003 through FY 2007, and provided funding at $15 million for each of those years (7 U.S.C. 3007(a)). Section 4402 of the Farm Bill also gave the Department the authority to develop regulations deemed necessary for the SFMNP (7 U.S.C. 3007(c)).

FNS announced the opportunity to apply for SFMNP funding during FY 2002 on December 13, 2001. A competitive process was once again used to review and evaluate applications that were received, and 32 States, 3 Indian tribal governments, and the District of Columbia were awarded SFMNP grants. As in FY 2001, State agencies were responsible for all administrative expenses associated with the operation and administration of the SFMNP; the grant awards could only be used for food costs. In FY 2002, just over 500,000 individuals received SFMNP coupons for produce made available from approximately 10,000 farmers at 1,500 farmers' markets, 1,000 roadside stands, and 200 community supported agriculture programs. Just over 89 percent of the SFMNP funds awarded were expended during the FY 2002 grant period, which ended on December 31, 2002.

While still administered as a competitive grant for FY 2003, the SFMNP grant application process was modified slightly. State agencies that received SFMNP grants in FY 2002 ("current grantees") were not required to compete against "new" State agencies, *i.e.*, State agencies that had not previously received an SFMNP grant. Current grantees were guaranteed funding in FY 2003 equal to the amount of SFMNP funds they spent in FY 2002; proposals for funds over and above that level were reviewed against a specific set of evaluation criteria, separately from the criteria addressed in grant applications from new State agencies. Once FNS had met its commitment to the FY 2002 SFMNP grantees at the level of their prior-year expenditures, remaining funds were made available for allocation to new SFMNP State agencies and to current State agencies to support expansion or growth in their present program models. FNS was able to award grants to 4 new State agencies, as well as to 14 current grantees for expansion of their existing programs. Participation in the SFMNP for FY 2003 exceeded the FY 2002 totals by a factor of more than 30 percent, serving over 800,000 senior recipients, with a redemption rate (percentage of coupons actually used to purchase eligible foods based on the total number of coupons issued to eligible recipients) of approximately 90 percent.

The process used to award SFMNP grants in FY 2004 was the same as that used in FY 2003: Grant applications were solicited from State agencies who wished to receive funds above their FY 2003 expenditure levels and from State agencies who were interested in initiating the SFMNP. Again, two

separate panels reviewed and scored the applications. Once FNS had met its commitment to the FY 2003 SFMNP grantees at the level of their prior-year expenditures, remaining funds were made available for allocation to new SFMNP State agencies and to current State agencies to support expansion or growth in their present program models. In FY 2004, FNS was able to award grants to 7 new State agencies, as well as to 15 current grantees for expansion of their existing programs. Consistent with the pattern that is developing as the SFMNP matures, participation is expected to increase slightly over the FY 2003 level, and the redemption rate is expected to remain at between 85 and 90 percent.

Consistency With the WIC Farmers' Market Nutrition Program (FMNP)

USDA's Food and Nutrition Service has administered the FMNP since its inception as a pilot program in 1988, through its transition to an authorized independent program when the WIC Farmers' Market Nutrition Act of 1992 (Pub. L. 102–314) amended Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). The FMNP provides coupons to eligible WIC participants (or to individuals on WIC waiting lists) for the purchase of fresh, nutritious, unprepared fruits, vegetables and herbs at farmers' markets and, at the State agency's option, at roadside stands or farmstands. Many of the State agencies that have received SFMNP grant awards since FY 2001 were already established as administering agencies for the FMNP in that State. Based on the similar natures of the FMNP and the SFMNP, and in an effort to create consistency between the two programs, this proposed rule is constructed on the framework of the FMNP regulations, for which the final rule was published in the **Federal Register** on September 27, 1995 (60 FR 49739).

Difference Between SFMNP Competitive Grants and the SFMNP as an Established Nutrition Assistance Program

As proposed, the SFMNP is very similar to the programs that have been operated by State agency grantees through the competitive grant program since the program's inception in FY 2001. For example, State agencies will continue to have some flexibility in the basic design of their programs. However, several significant modifications have been made to the SFMNP that must be implemented by all participating State agencies in order to receive future SFMNP grants. These modifications have been designed to achieve greater consistency within the SFMNP on a nationwide basis, and fall into 5 major categories:

1. State agency eligibility;
2. Recipient eligibility;
3. Benefit level;
4. Funding; and
5. Community supported agriculture programs.

Following is a discussion of each section of the proposed rule, in the order presented; the major provisions set forth in each section, including the specific issues noted above; and the Department's rationale for each provision.

1. General Purpose and Scope (§ 249.1)

While the essential purpose of the SFMNP is very similar to that of the FMNP, it differs from the FMNP purpose in one significant aspect: it includes community supported agriculture (CSA) programs as allowable outlets for accepting SFMNP coupons or funds. CSA programs, while fairly familiar to the small farmer and sustainable agriculture communities, have not previously been associated with FNS programs. Thus, the purposes and scope of the SFMNP are retained in regulation as directed by the provisions of Pub. L. 107–171 (7 U.S.C. 3007); *i.e.*, to improve/enhance the diets of low-income seniors by enabling them to obtain fresh fruits and vegetables from farmers' markets, roadside stands, and CSA programs, and to develop or expand these outlets by broadening their customer bases.

2. Definitions (§ 249.2)

Most of the definitions used in this rulemaking for the SFMNP are either the same as those used in the FMNP or are definitions used in the SFMNP competitive grant program. Some of the definitions used in this proposed rule warrant additional explanation, whereas others are more straightforward and self-explanatory.

"Administrative costs." The proposed rule defines "administrative costs" as allowable SFMNP costs as defined in § 249.12(b). Further discussion of the Department's intention to provide administrative funding for the SFMNP can be found below in Section 12 of this preamble. Allowable administrative costs, which have not previously been permitted in the SFMNP, are specifically listed at § 249.12(b) of this proposed rulemaking, and generally include any expense associated with the operation of the SFMNP except the actual value of the coupons or CSA shares provided to eligible recipients.

"Community supported agriculture programs." CSA programs are discussed in greater detail in Section 10(i) of this preamble. In the proposed rule, "community supported agriculture program" refers to a less traditional program model under which one or more farmer(s) grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop for that season. State agencies may purchase shares or subscribe to a CSA program on behalf of individual SFMNP recipients.

"Compliance buy." State agencies may conduct compliance buys as part of their monitoring efforts. Compliance buys are generally covert, on-site investigations in which a SFMNP representative poses as a SFMNP recipient or authorized representative and transacts one or more coupons and/or in the case of a CSA program, attempts to obtain produce purchased with SFMNP funds at a distribution site. Because the busy, informal atmosphere of a farmers' market and/or CSA program distribution site may make it difficult to detect program violations, compliance buys can provide an objective measure of whether farmers are violating SFMNP rules by providing change for SFMNP coupons, collecting sales tax on purchases made with SFMNP coupons, or providing ineligible foods to SFMNP recipients.

"Coupon." In the SFMNP proposed rule, the term "coupon" is used to refer to a check or to some other negotiable financial instrument by which benefits under the program are transferred to program recipients. While many State agencies issue checks (to eligible recipients) that can be endorsed and deposited directly into the farmer's checking account for immediate payment, others issue an actual coupon that must be submitted to the State agency, or to its agent, for review and payment. For the purposes of this rule, the term "coupon" is used generically to refer to either type of instrument.

"Distribution site." It is not always possible in the CSA program model for SFMNP recipients to travel to the farm where the fruits and vegetables are actually grown. Nor is it always cost-efficient for the State agency to include in its CSA contract a provision for the farmer to assemble and deliver the food packages to individual SFMNP recipients. Therefore, many State agencies work with their CSA program farmers to identify one or more locations where recipients or local agency staff can go on a predetermined schedule to obtain their SFMNP foods. This rule includes a definition of

"distribution site" to refer to such locations.

"Eligible foods." One of the stated purposes of the SFMNP is to provide eligible recipients with "fresh, nutritious, unprepared foods (such as fruits and vegetables)." The Department realizes that a broad variety of foods are available at farmers' markets and roadside stands, and through CSA programs, that are not fresh and unprepared, including jams and jellies, baked goods, maple syrup, cider and fruit juices, and cheese. Such foods are not eligible foods for the SFMNP.

Among the remaining food choices that meet the fresh, nutritious and unprepared criteria, the Department decided to limit eligible foods to fresh fruits, vegetables, and herbs. As a result, although some foods in addition to fruits, vegetables, and herbs may be considered "fresh, nutritious, and unprepared," they are excluded as eligible foods. These include honey, as well as protein foods such as eggs, raw seeds and nuts, meats, fish and seafood. Honey is neither a fruit nor a vegetable; it is further excluded from consideration as an eligible food in the interest of consistency with the FMNP, which does not allow the purchase of honey with program benefits.

The definition of "eligible foods" in the SFMNP regulation is consistent with the one that has been used consistently in the SFMNP grant solicitations since the inception of the program, and is the one with which participating SFMNP State agencies are most familiar. This definition, which specifically addresses questions regarding the eligibility of certain specific food items, as well as certain types of foods, is in the Department's opinion more responsive to the issues that have arisen or are likely to arise in the operation of the SFMNP. For example, the proposed definition at § 249.2 states that dried fruits and vegetables, such as prunes, raisins, sun-dried tomatoes, or dried chili peppers are ineligible for purchase with SFMNP benefits. Potted fruit, vegetable, or herb plants, dried herbs, wild rice, and nuts of any kind are likewise ineligible.

"Farmer." The term "farmer" in this rulemaking refers to someone who has been authorized by the SFMNP State agency to sell produce at participating farmers' markets and/or roadside stands, and/or through CSA programs. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP. This is consistent with the definition of farmer under the FMNP and the Department's belief that the SFMNP should benefit smaller, local farmers. The SFMNP State agency may authorize individual farmers or farmers' markets, roadside stands, and/or CSA programs, at its discretion.

"Farmers' market." Pursuant to 7 U.S.C. 3007, two of the three stated purposes of the SFMNP are to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSA programs, and to develop or aid in the development of new and additional farmers' markets, roadside stands, and CSA programs. Because the stated purpose of the SFMNP is virtually identical to that of the FMNP, as proposed in § 249.2, the definition of "farmers' market" is the same as the definition used for the FMNP.

"Federally recognized Indian tribal government." Federally recognized Indian tribal governments are defined at 7 CFR 3016.3, the Department's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments. Federally recognized Indian tribal governments are recognized as independent entities, and as such are eligible to apply for and receive SFMNP grants under the same terms and conditions as geographic State agencies. These entities may also participate in the SFMNP as local agencies under the auspices and jurisdiction of the SFMNP-administering State agency in the geographic State where the tribe or tribal organization is located.

"Fiscal year." As with all Federal grant programs, "fiscal year" refers to the Federal fiscal year which begins on October 1.

"Food costs" refers only to the cost of eligible foods purchased at authorized farmers' markets, roadside stands, and/or through CSA programs. Such costs may not include expenses associated with printing or issuing SFMNP coupons or benefits in any form.

"Household." The definition of "household" for the SFMNP is the same as that used in the FMNP, *i.e.*, a group of related or nonrelated individuals who are living together as one economic unit (7 CFR 248.2).

"Local agency." FNS proposes that "local agency" mean a nonprofit entity or local government agency that is responsible for one or more administrative functions of the SFMNP's program operation. Such functions include certifying eligible recipients, issuing SFMNP coupons, arranging for the distribution of produce through CSA programs, and/or providing nutrition education or information on the operational aspects of the Program to SFMNP recipients.

"Locally grown." Under the SFMNP, "locally grown" refers to eligible foods (fruits, vegetables, and herbs) grown within the borders of the administering State and at State option, areas in counties adjacent to that State. Consistent with the WIC Program, the FMNP, and other food assistance programs administered by the Department, the SFMNP values its partnership with American agriculture and therefore promotes the use of SFMNP coupons to purchase domestically grown products at participating outlets. Many States already prohibit the use of SFMNP coupons to purchase foods grown outside of that State. However, some States define "locally grown" as including the counties outside but adjacent to the State boundary. Therefore, this proposed rulemaking provides State agencies the option to define "locally grown" to include produce grown in areas of States adjacent to that State, as long as such areas are part of the United States. State agencies may want to consider the advantages of establishing "locally grown" guidelines for the purpose of improving marketing opportunities for local farmers. State agencies other than State Departments of Agriculture that are administering the SFMNP should work closely with their Agriculture counterparts to establish a definition of locally grown that is satisfactory to both entities, i.e., that offers SFMNP recipients a broad choice of eligible foods while serving to benefit that State's small or mid-size farmers.

"Nonprofit agency." Consistent with other FNS programs, "nonprofit agency" refers to a private agency that is exempt from Federal income tax under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*). While a nonprofit agency may participate as a local agency in the operation and administration of the SFMNP, it may not serve as the lead State agency for the Program.

"Nutrition education." Nutrition education is an integral component of all FNS nutrition assistance programs, including the SFMNP. The Department does not prescribe specific requirements as to how nutrition education must be provided for the SFMNP. Instead, this proposed rule offers a definition that addresses the principal elements of nutrition education. That definition includes individual or group sessions that encourage SFMNP recipients to build healthful eating patterns and take action for good health, and the provision of materials that emphasize

relationships between nutrition and health. All nutrition education models, whether they involve individual counseling, group demonstrations, or written materials such as recipes and pamphlets about food safety, must be designed to take into consideration the individual's personal, cultural, and socioeconomic preferences and the current Dietary Guidelines for Americans.

"Proxy." Many seniors are eligible to receive SFMNP benefits but are unable to participate in the Program for a variety of reasons. Some of these obstacles include frail health or other physical limitations, and lack of transportation to and from the farmers' market, roadside stand, or CSA program distribution site. Several State agencies have addressed these problems by allowing an eligible senior to designate another individual as his/her authorized representative, or "proxy", to conduct the SFMNP transactions. Proxies may perform a number of functions, including applying for the SFMNP on behalf of the eligible senior, accepting and signing for SFMNP coupons or CSA program shares when they are issued, shopping for eligible foods at the market or roadside stand, and/or picking up and delivering eligible foods from a CSA program distribution site. Therefore, "proxy" is defined in this proposed rule to mean an individual authorized by an eligible senior to perform any and all of these functions, as long as the eligible senior ultimately receives the SFMNP benefits. State agencies generally require a proxy to present documentation, signed by the eligible senior, of his/her authorization to represent the senior in any SFMNP activity or transaction, and to be equally responsible for any program abuse or violation. The terms "proxy" and "authorized representative" may be used interchangeably for purposes of this program.

"Recipient." "Recipient" is defined for the SFMNP in this proposed rule as someone whose SFMNP eligibility has been determined based on the eligibility requirements of the program (described in detail in Section 6 of this preamble), and to whom coupons or equivalent benefits have been issued. A recipient may, at State agency option, be either an individual or a household. This distinction is discussed in greater detail later in this preamble.

"Roadside stand." Also known as a farmstand, "roadside stand" in the SFMNP refers to an outlet through which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market or through a CSA program.

"Senior." For the SFMNP, "senior" generally refers to an individual not less than 60 years of age. However, State agencies have the option to establish the minimum age at older than 60. Some SFMNP State agencies currently use 62 or 65 as the minimum age for SFMNP eligibility. On the other hand, as discussed in proposed § 249.6(a)(1), State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may also, at their discretion, deem disabled individuals under 60 years of age who are currently living in housing facilities occupied primarily by older individuals (60 years or older) where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits.

"Shareholder." Sometimes called a subscriber, a shareholder means a SFMNP recipient who does not receive his/her program benefits in the form of checks or coupons that can be used at established farmers' markets or roadside stands. Instead, the SFMNP State agency may elect to purchase a full or partial share in a community supported agriculture program, and to provide the eligible senior with SFMNP benefits in the form of actual eligible foods.

"State." Consistent with Section 15(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(i)), "State" for the purposes of the SFMNP means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and as applicable, American Samoa or the Commonwealth of the Northern Marianas.

"State agency." "State agency" means the organizational unit within the State, U.S. Territory, or federally recognized Indian tribal government that has administrative responsibility for the SFMNP. This includes a State Department of Agriculture, Health, Social Services, a State Agency on Aging, or any other agency approved by the chief executive officer of the State (generally the Governor or Tribal Chief). A nonprofit agency may not be designated as a State agency for the SFMNP, but may operate as a local agency under the oversight of the State agency.

"SFPD." "SFPD," the entity within FNS that oversees the administration of the SFMNP on a national basis, refers in this proposed rule to the Supplemental Food Programs Division of the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture.

"State Plan." "State Plan" means a plan of SFMNP operation and administration that must be submitted annually to FNS. The State Plan describes the manner in which the State agency intends to implement, operate, and administer all aspects of the SFMNP within its jurisdiction. Specific requirements of the SFMNP State Plan are set out in § 249.4 of this proposed rule.

"WIC Farmers' Market Nutrition Program" or "FMNP." The WIC Farmers' Market Nutrition Program (FMNP) refers to an existing program, originally authorized by the Farmers' Market Nutrition Act of 1992 (Pub. L. 102–314), that was designed to provide resources to women, infants, and children who are nutritionally at risk (*i.e.*, WIC participants), in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) that can be purchased at farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets. Legislative language pertaining to the FMNP is found at Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)).

3. Administration (§ 249.3)

FNS is responsible for the administration of the SFMNP within the Department, and will provide assistance to State agencies and evaluate all levels of Program operations to ensure that the goals of the Program are effectively and efficiently achieved. The Supplemental Food Programs Division and the FNS Regional offices are responsible for administration within FNS. Each State agency is responsible for the effective and efficient administration of the SFMNP within that State, and must provide guidance to cooperating State and local agencies on all aspects of SFMNP operations. State SFMNP coordinators/program managers are expected to communicate with the designated SFMNP contacts in the appropriate FNS Regional offices, as set forth in § 249.26 of this proposed rule, regarding SFMNP operations.

SFMNP grant funds will be provided to the administering State agency or agencies designated by the Chief Executive Officer of the State or Indian tribal organization. A State agency may be the agriculture department, the health department, the State agency on aging, or other comparable agency within State government; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has

contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

As set forth in this proposed rule, the Chief Executive Officer of the State would be responsible for coordination between the agency designated to administer the SFMNP and any other State, local or nonprofit agency, as necessary, by requiring written agreements between the agencies. In order to guarantee further successful operation, State agencies will need to ensure that sufficient staff is available to administer an efficient and effective Program, and to provide an outline of administrative staff and job descriptions for staff whose salaries will be provided in any part from SFMNP funds. Also as set forth in this proposed rulemaking, the availability of up to 8 percent of the Federal SFMNP grant for administrative funding for SFMNP operations (which was not available when the SFMNP was administered as a competitive grant program) is expected to aid the staffing and administrative requirements of the Program.

In the absence of Federal administrative funds for the SFMNP under the pilot program and the competitive grant program, State agencies operating the program have established effective and often creative networks and collaborations with other State, local, and private nonprofit agencies and organizations in order to accomplish their goals and objectives for the SFMNP. The Department encourages all participating SFMNP State agencies to continue not only working within the networks that have already been established, but also to broaden and enhance these collaborations within the framework of the SFMNP as a permanent program. Although some administrative costs may now be covered by the Federal SFMNP grant (*see* section 14–c of this preamble), State agencies should keep in mind that SFMNP funds used to defray an administrative expense may also represent a reduction in the number of eligible recipients to whom SFMNP benefits can be provided. The Department does not intend to impose a stringent maintenance of effort provision that would require SFMNP State agencies to sustain the current level of non-Federal administrative support (cash as well as in-kind contributions) that has been available for the operation and administration of the SFMNP when it was a competitive grant program. The Department believes that in addition to protecting State agencies from the potential of significantly reducing their recipient base, there are many other benefits to maintaining these coordinated relationships wherever possible—streamlined service delivery, effective cross-program referrals, and better-targeted nutrition education modules, to name a few.

4. State Plan Provisions (§249.4)

In establishing the SFMNP as a permanent program, Congress gave the Department the authority to set out basic standards and requirements for its operation. Consistent with other FNS nutrition assistance programs, each State agency that desires to receive a SFMNP grant, including State agencies currently participating in the SFMNP, will need to submit a State Plan of Operation for approval by the Department. These State Plans will be due by November 15 of each year.

The State plan process replaces the grant application process that was used for the SFMNP since its inception in FY 2001. This proposed rule sets out at § 249.4(a) the specific elements that are necessary to the approval of each State Plan submitted to the Secretary. A complete list of the proposed State Plan requirements is contained in proposed § 249.4.

The Department recognizes that many State agencies administering the SFMNP also administer the FMNP. Furthermore, many of the administrative provisions required for the SFMNP and FMNP State plans are identical. In an effort to minimize the administrative burden for these State agencies, the Department will allow them to submit one consolidated State Plan of Operation for both programs in accordance with guidance provided annually by FNS. This option will be available only to those State agencies that serve as the lead State agency for both programs. If the FMNP is administered by the WIC State agency and the SFMNP in that same State is administered by the State Department of Agriculture, then two separate State Plans of Operation must be submitted to FNS. Similarly, if the State Department of Agriculture administers the FMNP but the State Agency on Aging is the lead agency for the SFMNP, both of these State agencies must submit separate State Plans to the appropriate FNS Regional Office. In instances such as these, the individual State agencies will be responsible for coordinating any joint or overlapping functions, and for ensuring that all areas of overlapping functions are fully described in both State Plans. Examples of overlapping functions may include authorization, training, and monitoring of farmers, farmers' markets, and/or roadside stands; nutrition education classes and food demonstrations; and certification of and issuance to SFMNP recipients.

Some of the issues related to the CSA program models used to deliver SFMNP benefits are addressed separately in this preamble. However, because CSA programs differ so significantly from the traditional coupon model, specific provisions pertaining to CSA programs will also be required as part of the SFMNP State Plan, as proposed at § 249.4(a)(12).

As noted above, State Plans of Operation are due to FNS by November 15 of each year. Substantive changes in SFMNP operations that are anticipated for the coming year or market season, such as the addition of new service delivery areas or new procedures for certifying eligible recipients should be included, and fully described in the regular November 15 submission, whenever possible. The Department understands that alterations and modifications are sometimes necessary for the current year's program operation after the State Plan has already been submitted and approved. In the event that a State agency significantly modifies any aspect of its program operation or administration, *e.g.*, the addition of a new partner agency or a change in its procedure for issuing coupons to eligible recipients during the course of the market season, a State Plan amendment must be submitted to FNS for approval. The State agency may not implement the requested modification until formal (written) approval has been received from FNS. These clarifications are described in proposed § 249.4(b) of this rule. In addition, FNS plans to issue detailed guidance regarding the required content of the State Plan of Operation to all currently participating SFMNP State agencies, as well as to other interested State agencies, in advance of the November 15, 2005 deadline.

5. Selection of State Agencies (§ 249.5)

Two major questions arose out of the Department's consideration of this issue:

a. What entities should be eligible to serve as SFMNP State agencies, and

b. Should current SFMNP grantees be grandfathered into the permanent program as participating State agencies?

In regard to the first question (What entities should be eligible to serve as SFMNP State agencies?), the Department wishes to recognize and express its appreciation to those nonprofit organizations and local agencies, such as the Area Agencies on Aging, for their support and assistance in assuring the smooth operation of the

SFMNP at the local level. However, the nutrition assistance programs administered by FNS are generally structured so that Federal program grants are allocated to designated State agencies. All States, United States Territories, and federally recognized Indian tribal governments were eligible to receive SFMNP grants through a competitive process. As defined in the SFMNP grant solicitations used in the past, SFMNP State agency eligibility was limited to State Departments of Agriculture, Aging, Health, or any other agency approved by the chief executive officer of the State. The FMNP regulations at 7 CFR 248.2 provide a broader definition of State agency to include an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes, and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service. Because of the FMNP, many of these entities—including all six of the Indian tribal organizations currently participating in the SFMNP—already have structures in place to administer the program.

Therefore, at proposed § 249.2, the Department sets out a specific definition of "State agency" for the SFMNP. We believe that the entities included in this definition are the most appropriate entities to administer the SFMNP. As appropriate, these entities may subcontract with nonprofit or local level organizations to perform specific functions, such as recipient outreach and certification, nutrition education, coupon issuance, market management, and/or coupon reconciliation.

The implications of the second question (Should current SFMNP grantees be grandfathered into the permanent program as participating State agencies?) are significant with respect to the future growth and/or expansion of the SFMNP. Since the inception of the pilot program in FY 2001, SFMNP grants have been awarded through a competitive grant process. In FY 2002, funds were not sufficient to award grants to all State agencies that operated the program in FY 2001 and applied in FY 2002. Therefore, State agencies that operated the program in FY 2001 and wanted to continue had to compete with new State agencies for available program funds. Initially, given limited funds, some State agencies that operated the program in FY 2001 were not chosen to operate the SFMNP in FY 2002. However, through Section 4402 of the Farm Bill (Pub. L. 107–171), Congress authorized the use of additional Commodity Credit Corporation funds for the SFMNP. During a Senate floor colloquy between Senators Kohl and Harkin on the day that the Farm Bill was passed by the Senate (May 8, 2002), and later confirmed in a letter to the Secretary of Agriculture, FNS was directed to provide funding to State agencies that were not selected during the FY 2002 grant review process, but who operated the SFMNP in FY 2001. For FY 2003 and FY 2004, current grantees were guaranteed a base level of funding. Therefore, based on Congress' intent in FY 2002, the Department has set a precedent of guaranteeing funding to State agencies that have participated in the SFMNP in the prior year and who wish to continue operating during the next year. The Department, therefore, will grandfather all current SFMNP grantees into the permanent program as participating SFMNP State agencies. This means that any State agency that received an SFMNP grant award in FY 2005 will be guaranteed an SFMNP grant in FY 2006. As proposed at § 249.14, the actual amount of each State agency's base grant would be equal to the total Federal funds received in FY 2005, contingent upon the availability of sufficient funds for the SFMNP and an approved State Plan. The National Association of Farmers' Market Nutrition Programs (NAFMNP) supports this provision.

New State agencies wishing to participate in the SFMNP will have their State plans approved and ranked based on objective criteria established by FNS. Such criteria may include: the amount of funding requested (in proportion to the amount of funding available), the number of recipients projected to be served, and the projected benefit level.

6. Recipient Eligibility (§ 249.6)

a. Categorical Eligibility

Based primarily on other FNS programs that serve low-income elderly persons, categorical eligibility was established for the SFMNP pilot program in FY 2001 to refer to individuals 60 years of age and older, unless grantees applying to operate the SFMNP could provide justification to FNS for a lower age limit. Most State agencies have used the age of 60 as the minimum age for SFMNP recipients, with a few notable exceptions. FNS is proposing that all SFMNP State agencies would have the option to establish a higher age limit, such as 62 or 65 years of age, at their discretion, based on the particular needs of the elderly populations in their States.

Both the Food Stamp Program (7 CFR 271.2) and the Commodity Supplemental Food Program (CSFP) (7 CFR 247.2) define "elderly" to mean at least 60 years old. However, the Bureau of Indian Affairs defines "elders" and "elderly" for the Native American population as 55 years of age or older. Therefore, federally recognized Indian tribal governments that receive SFMNP grants, and other State agencies that serve Native American seniors, generally use 55 or older as the minimum age for Native Americans and 60 years of age for all other SFMNP recipients.

In §§ 249.2 and 249.6(a)(1) of this proposal, the Department defines a person categorically eligible for the SFMNP (a "senior") as an individual 60 years of age or older. Indian tribal organizations administering the SFMNP are afforded the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. This position is consistent with existing legislation, policy and practice in other FNS and Department of Health and Human Services (HHS) programs serving elderly individuals, such as congregate meals provided under the Older Americans Act, 42 U.S.C. 3001, *et seq.* Under Section 339 of the Older Americans Act, Pub. L. 86–73, as amended by Section 313 of the Older Americans Act Amendments of 2000, Pub. L. 106–501, (42 U.S.C. 3030g.21(2)(h)), FNS has also approved requests from some SFMNP grantees to provide benefits to disabled individuals who live in senior housing facilities but have not yet reached the age of 60. It is permissible, but not required, to provide services to disabled individuals who reside in housing facilities occupied primarily by older individuals where congregate nutrition services are provided. HHS' Administration on Aging has advised us that most States require service to disabled individuals in these circumstances.

Therefore, in proposed § 249.6(a)(1), the Department allows State agencies the option to deem disabled individuals under 60 years of age, who live in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible for SFMNP benefits. SFMNP State agencies opting to serve such disabled individuals would be responsible for weighing the relative benefits of serving those persons in certain housing facilities against serving additional elderly recipients who are 60 years of age and older in the

same, or possibly another, service delivery area.

b. Residency Requirement

In this proposed rulemaking, the Department allows State agencies to establish a residency requirement for SFMNP applicants, in § 249.6(a)(2). Further, the Department allows State agencies the option to determine a service area for any local agency, and may require an applicant to reside within the service area at the time of application. However, State agencies are not permitted to impose any durational or fixed residency requirement. A "fixed residency requirement" is one that would require an applicant to have a permanent domicile in order to be eligible to receive SFMNP benefits.

c. Income Eligibility

In developing this proposed rulemaking, FNS identified and considered three major aspects to the determination of income eligibility for the SFMNP, as follows:

1. What should be the maximum allowable household income?

2. Should FNS allow automatic income eligibility based on an individual's participation in other programs? If so, which programs should be included?

3. How much documentation or verification of income eligibility should be required for SFMNP applicants?

Income eligibility guidelines. Since the inception of the SFMNP, the maximum household income has been 185 percent of the annual poverty income guidelines; consistent with the WIC Program (Section 17(d)(A)(i) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(d)(A)(i)), unless the grant applicant could provide justification to FNS for a higher limit. In FY 2004, 36 of the 47 participating SFMNP State agencies used a maximum income level of 185 percent of the poverty guidelines to determine income eligibility for the program. Seven State agencies linked SFMNP income eligibility to the maximum income limit used in the Commodity Supplemental Food Program (CSFP), *i.e.*, 130 percent (7 CFR 247.7(a)(3)). Other variations existed, such as between 150 and 200 percent of the poverty income guidelines.

In § 249.6(a)(3), the Department proposes to retain the maximum income limit of 185 percent level for the SFMNP in this proposed rulemaking. The NAFMNP supports this proposal.

Automatic income eligibility based on participation in other programs. Many SFMNP grantees use participation in other means-tested programs to determine eligibility for the SFMNP. The programs most frequently used to establish automatic SFMNP income eligibility are, as might be expected, the Food Stamp Program, the CSFP, and the Food Distribution Program on Indian Reservations (FDPIR). As indicated above, all of these programs use an income eligibility limit that is at or below 130 percent of poverty. Allowing eligibility for the SFMNP to be based on participation in another program for which income eligibility has already been established enables SFMNP State agencies to reduce their administrative burden significantly in terms of cost as well as staffing resources. It also facilitates the certification process for elderly recipients by minimizing the burden and amount of time involved in establishing eligibility for the SFMNP.

Under this proposal, the Department will continue to allow State agencies the option to deem applicants automatically eligible for the SFMNP based on participation/certified eligibility to receive benefits in another means-tested assistance program, as determined by the State agency, as long as (1) income eligibility is set at or below the SFMNP maximum income, *i.e.*, 185 percent of the annual poverty income guidelines, and (2) some form of documentation is required to establish income eligibility for that program.

Documentation of income eligibility. Currently, most SFMNP grantees deem applicants automatically income eligible for the program based on participation in (or certified eligibility to receive benefits in) another means-tested program, such as the Food Stamp Program, CSFP, or FDPIR. In general, the remaining grantees have applicants either provide proof of participation in such a program, or sign an affidavit affirming that their household income does not exceed the State agency's maximum income limit for their individual household size.

While the burden on participants is significantly lessened by allowing State agencies to deem seniors eligible for the SFMNP based on a signed affidavit, the Department is concerned that such convenience may be achieved at the expense of program integrity.

Therefore, proposed § 249.6(b) requires SFMNP applicants who are not automatically income eligible for the program based on participation in or certified eligibility for another means-tested program to provide documentation of family income at certification. State and local agencies have the option to verify reported income further, in order to confirm an applicant's income eligibility for the SFMNP.

d. Certification Periods

The Department proposes to establish in § 249.6(c) a certification period for SFMNP recipients. This is consistent with the establishment of certification periods for other FNS programs. Recipients may be certified only for the current fiscal year's SFMNP period of operation. Prior fiscal year certifications may not be carried over into subsequent fiscal years; however, the State agency may use recipient enrollment listings from the prior fiscal year in its outreach efforts for the current fiscal year. Certification for the SFMNP must be performed at no cost to the applicant or the authorized representative/proxy.

e. Rights and Responsibilities

In § 249.6(d), the Department would require State/local agencies to inform applicants or authorized representatives/proxies of their SFMNP rights and responsibilities. This includes informing such individuals of:

- The illegality of dual participation, *i.e.*, obtaining SFMNP benefits from more than one service delivery area or from more than one SFMNP program model within the same service delivery area;
- Their rights and obligations under the program; and
- Information about the use of SFMNP coupons and/or access to produce under a CSA program.

This section also requires State/local agencies to notify applicants in writing if they are ineligible for SFMNP benefits (including the reasons for the determination of ineligibility), and of their right to a fair hearing. In addition, State/local agencies must provide written notification, including specified information, if a claim is assessed against an individual for improperly issued SFMNP benefits.

f. Use of Authorized Representatives/Proxies

The Department allows State agencies in this proposal to permit seniors to designate authorized representatives/proxies to act on their behalf to apply for certification and/or redeem SFMNP coupons or pick up eligible foods at distribution sites. This provision is intended to accommodate those seniors who may be unable to apply in person or travel to markets, roadside stands and/or pick up eligible foods at CSA distribution sites. Currently, many SFMNP grantees authorize the use of authorized representatives/proxies.

g. Processing Standards/Waiting Lists

SFMNP State agencies are required, in proposed § 249.6(g), to notify applicants

of their eligibility or ineligibility for benefits, or placement on a waiting list, within 10 days from the date of application. Further, the Department requires State agencies to keep a waiting list of individuals who apply for benefits but cannot be served. This information will enable State/local agencies to certify individuals if funding within the State is reallocated based on need. The waiting list must include the name of the applicant, the date he/she was placed on the waiting list, and an address or phone number in order to contact the applicant. These requirements are consistent with the FNS-administered CSFP, which also serves seniors.

h. Limitations on Certification

As set forth in § 249.6(h) of this proposed rule, State agencies may impose other eligibility requirements or priorities for receiving SFMNP benefits as may be deemed necessary. For instance, most State agencies limit distribution to specific geographic areas, and some give priority to homebound seniors.

7. Nondiscrimination (§ 249.7)

This section of the proposed rule describes the requirements of the SFMNP related to compliance with existing civil rights provisions, including racial/ethnic participation reporting and provisions for handling complaints of alleged discrimination based on race, color, national origin, age, sex, or disability.

As indicated in § 249.7(a) of the proposed rule, Title VI of the Civil Rights Act of 1964 requires that racial and ethnic participation data be collected from all SFMNP benefit recipients. This requirement represents a departure not only from what has been required of SFMNP State agencies as grantees under the competitive grant process, but also from the data collection requirements of the FMNP. Participants in the FMNP are by definition WIC participants, and as such, the racial/ethnic information on these individuals is collected and reported through the WIC Program. The necessary racial and ethnic data for SFMNP recipients must be reported on a form provided by FNS, according to the categories established by the Office of Management and Budget's regulations at 62 FR 58781.

8. Level of Benefits and Eligible Foods (§ 249.8)

Unlike the FMNP, for which minimum and maximum benefit levels were established by law, SFMNP State agencies have since the inception of the program been permitted to choose their benefit levels without any restriction on the amount provided to recipients. This has resulted in variation from State to State in the total food benefit level per person. In FY 2003, the total food benefit level per person in the SFMNP ranged from $10 to $315, with an average annual benefit level of $44. This variation occurred because State agencies had the flexibility to experiment with the factors contributing to the determination of an appropriate benefit level for their SFMNP recipients. Such factors included but were not limited to: the locations of farmers' markets relative to where seniors generally live and/or shop; the ability of farmers to offer a variety of fruits and vegetables over the course of a market season; the senior's physical ability to use the produce he/she purchases effectively; and the length of the growing season. However, as a permanent program, the Department believes that there should be specific guidelines for a minimum and maximum benefit level in the SFMNP. In FY 2003, even with a wide range of recipient benefit levels, the majority (80 percent) of grantees had a benefit level of $50 or below. Only 6 of the 40 grantees had a benefit level of less than $20.

By law, Section 17(m)(5)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)), the total food benefit level per participant, per year, in the FMNP is a minimum of $10, and a maximum of $30. This level was not changed from the start of the program in 1989 until the enactment of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004. When the original FMNP maximum benefit level of $20 is adjusted for inflation over the past 13 years, the benefit level increases to $40. Further, FMNP participants tend to belong to multi-member households receiving multiple program benefits, whereas the majority of SFMNP recipients tend to live alone or with only one other person.

Based on these considerations, the Department proposes to set the SFMNP minimum and maximum annual benefit levels at $20 and $50, respectively, for all coupon issuance program models (farmers' markets, roadside stands and/or CSA programs). These levels should accommodate the majority of State agencies that already use a $20 benefit level, and are consistent with the current average benefit level of SFMNP benefits issued nationwide.

Another issue related to SFMNP benefit levels involves whether the same benefit level should be required on a statewide basis. Currently, a few SFMNP State agencies provide different benefit levels to eligible recipients within their State. Their rationale for this disparity is that there are more markets in some areas of the State; therefore, the senior recipients in those areas are better able to utilize more coupons. However, this policy penalizes senior recipients who live in a different part of the State by assuming that they would not be able to use the higher benefit level if it were provided to them. State agencies have also justified the variation in SFMNP benefit levels by expressing a concern that when the SFMNP is expanding into other areas within that State, the recipients in the "new" area may not use some or any of their benefits, resulting in a low redemption rate. Thus, some State agencies provide a lower benefit level in order to determine the level of interest in program participation by eligible seniors. The Department is concerned that in program models such as this, all senior recipients are not given an equal opportunity to spend an equivalent value of benefits within the State. State agencies have the flexibility to reallocate any unspent funds to other areas of the State where the demand is greater if it becomes necessary at any time during the market season. In order to ensure equitable treatment in and access to the SFMNP, the Department proposes in § 249.8(c) that all SFMNP recipients served by the State agency must be offered the same level of SFMNP benefits. Subsequently, the State agency may reallocate unspent SFMNP funds within local agencies/areas served based on need.

However, the Department's experience with CSA programs as a benefit delivery model in the SFMNP has shown that it may not be practical to mandate exactly the same benefit level for CSA program recipients in the same State as SFMNP recipients to whom coupons are issued for use at farmers' markets and/or roadside stands. Therefore, the Department has determined that the same statewide benefit level does not have to be applied for SFMNP recipients who are receiving benefits through a CSA program; such recipients are eligible to receive up to $50 in SFMNP benefits, even if SFMNP recipients in that same State are issued only $20 in coupons to use at farmers' markets or roadside stands.

Finally, the Department considered whether SFMNP benefits should be issued only on an individual basis, or if a provision should be included in the proposed rule to allow SFMNP benefits to be issued on a household basis. State agencies currently have the option to issue SFMNP benefits on an individual

or a household basis. For example, in a household of two seniors, each person could receive an individual benefit of $30, equaling a combined benefit of $60. Another option would be to limit the SFMNP benefits allocated to a single household to only $30, enabling the State agency to serve more eligible seniors with the $30 it has "saved" through a limitation on household benefit issuance. A few SFMNP State agencies that issue benefits on a household basis argue that this policy allows them to provide benefits to more seniors because the household benefit is more cost effective than the individual benefit level. FMNP regulations also permit State agencies to issue program benefits on a household basis rather than upon the number of persons in a household that are individually eligible to receive such benefits. However, the vast majority of SFMNP State agencies currently issue benefits on an individual basis. Regardless of which system is used, all State agencies are required to report recipient information on an individual basis. In the interests of consistency with the FMNP and the Department's desire to offer SFMNP State agencies flexibility, to the extent possible, in their program design, proposed § 249.8(c) would allow SFMNP State agencies the continued option to issue program benefits on either an individual or a household basis, as long as State agencies continue to report recipient information to FNS on an individual basis. This option, if SFMNP State agencies choose to implement it, also allows more recipients to be served with limited funds.

While this proposed rule defines in §§ 249.2 and 249.8(a) eligible foods as fresh, nutritious, unprepared fruits, vegetables, and herbs, States must specifically identify in their State Plans those foods that may be purchased (§ 249.4(a)(4)(vii)). The value of the Federal benefits received by any recipient under the SFMNP may not be less than $20 or more than $50 per year, as discussed above. Most States participating in the SFMNP competitive grant program found that the most practical distribution of coupons for the SFMNP is in booklets made up of small-denomination coupons—$1, $2, $3, or $5. If the SFMNP coupon's face value exceeds the purchase price of the selected produce, farmers are prohibited from giving cash change to recipients. Instead, this difference may be made up by providing recipients with extra eligible foods in the approximate value of the difference.

In the interest of enhancing local revenues, the Department recognizes and proposes to establish in § 249.8(a) a State agency's option to allow only locally grown produce, as defined by the State agency, to be purchased by SFMNP coupon recipients. Some States may consider this an attractive option for ensuring that SFMNP benefits remain in the State. State agencies also have the option to define what they consider to be "locally grown". For instance, some State agencies, for various reasons such as availability of an adequate volume and variety of produce, may consider produce grown in adjacent States as locally grown. At the same time, other State agencies may define "locally grown" only to be produce grown within the State boundaries. SFMNP State agencies other than State Departments of Agriculture should remember to include their agriculture counterparts in any discussions of how to define "locally grown" for purposes of the SFMNP.

Section 249.8(c)(3) proposes to prohibit sharing of food purchased through the SFMNP with non-participating household members. The Department recognizes the difficulty of enforcing such a provision, but maintains that it is nonetheless an extremely important one. SFMNP benefits are, in the vast majority of instances, issued to individuals with particular nutritional needs with the intention of improving that individual's diet by increasing his/her consumption of fresh fruits and vegetables. Therefore, program administrators can discuss this issue when recipients are certified and/or provided basic information about the SFMNP.

9. Nutrition Education (§ 249.9)

The Department believes nutrition education to be an integral component of any effective nutrition assistance program. For this reason, SFMNP State agencies have been required, since the inception of the pilot program in FY 2001, to include nutrition education as part of their program design in order to receive a Federal SFMNP grant.

Nutrition education has also long been the hallmark of several other FNS-assisted nutrition assistance programs, particularly the WIC Program and the FMNP, upon which the SFMNP is closely modeled. While nutrition education is being made increasingly available in other FNS programs, such as the Food Stamp Program, FDPIR, and CSFP, there is still no guarantee that SFMNP recipients are also participating in any of these programs, or that the focus of the nutrition education that is offered is appropriate for the SFMNP recipient population.

This proposed rule, at § 249.9, requires all participating State agencies to describe the nutrition education that will be provided to SFMNP recipients, including the agencies that will be responsible for providing the nutrition education (*e.g.*, Cooperative Extension Service, local Area Agencies on Aging, etc.), the format(s) in which the nutrition education will be provided (*e.g.*, recipe cards, cooking demonstrations, etc.), and the locations where the nutrition education is likely to be offered (*e.g.*, senior centers, farmers' markets, common rooms in assisted living facilities). The content of the nutrition education should be age- and circumstance-appropriate for SFMNP recipients. FNS will continue to encourage State agencies to take advantage wherever possible of existing nutrition education opportunities for senior recipients.

10. Coupon, Market and CSA Program Management (§ 249.10)

a. General

The proposed requirements in § 249.10 regarding coupon and market management in the SFMNP are the same or similar to corresponding requirements in the FMNP, 7 CFR 248.10, which are predicated on legislative provisions contained in Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). In those States where both the SFMNP and the FMNP are operating, State agencies are encouraged to consolidate and/or coordinate their policies and activities whenever possible. State agencies may deem farmers, farmers' markets and/or roadside stands as automatically authorized to operate the SFMNP based on current authorization to operate the FMNP. This will not only save time and money for both programs, but will also aid participating farmers and market managers by establishing the same rules and requirements for both programs.

The State agency is responsible for the fiscal management of, and accountability for, all authorized SFMNP outlets (farmers, farmers' markets, roadside stands and/or CSA programs). Farmers' markets are authorized by the State agency, which may administer the SFMNP directly or through a sub-agency such as a farmers' market association. Each State agency may authorize individual farmers, farmers' markets, CSA programs, or all three. Roadside stands are operated by individual farmers, so State agencies authorizing such outlets will have to have procedures for authorizing these individual farmers at a minimum. When the State agency authorizes farmers'

markets, the farmers' markets may authorize the farmers within the market to accept SFMNP coupons. Market managers often play an important role in the day-to-day management of the SFMNP, such as in the receipt of coupon batches from farmers and the reimbursement to farmers. Experience with the FMNP demonstration project (1989–1991) shows that the strongest markets were often those where the market manager had an active role in farmer training, compliance monitoring, reimbursing farmers, and redeeming coupons. Farmers at these markets were more likely to have a sound understanding of the demonstration project and to comply strictly with program guidelines. In contrast, where the market manager's role in the FMNP demonstration project was limited, there was usually greater misunderstanding among participating farmers about FMNP operations. In addition, FMNP participation was typically lower at markets with only minimal market manager involvement.

State agencies have broad discretion in developing systems for SFMNP coupon, market, and CSA program management. They should keep in mind, however, that it is the State agency that is ultimately responsible for the fiscal management of, and accountability for, all authorized outlets. The State agency is responsible for establishing criteria for the authorization of farmers, farmers' markets, and/or roadside stands, as well as the number of outlets that it plans to authorize, as provided in § 249.10 of this proposed rule. As indicated earlier in this preamble, the Department believes that the SFMNP is in significant part intended to help small, local farmers. State agencies may limit the foods eligible for purchase under the SFMNP to those locally grown, as defined by the State. To support this objective further, individuals who exclusively sell produce grown by someone else (such as wholesale distributors) are not eligible to participate in the SFMNP. This requirement does not apply to individuals who have been employed by an authorized farmer to sell his produce at the farmers' market or roadside stand, to individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers, or to individuals hired by a CSA program to represent the farm(s) offering shares in that season's harvest.

When SFMNP coupon reimbursement is delegated to farmers' market managers, farmers' market associations or non-profit organizations, or farmers' cooperatives (in the case of some CSA programs), State agencies may establish appropriate bonding procedures for these entities. The State agency may determine the best procedures to put in place for bonding. Costs of such bonding are not reimbursable administrative expenses. Additional criteria and requirements for authorizing farmers, farmers' markets, and/or CSA programs are identified in § 249.10 of this proposed rule.

b. Agreements

Section 249.10(b) of this proposed rule outlines the contents of the farmers' market/CSA program agreement. These agreements may be between the State agency and an authorized farmer, an authorized farmers' market, or an authorized CSA program, and may be no more than 3 years in duration. State agencies have the option to authorize individual farmers, as long as written agreements with these individuals are executed. State agencies that operate both the SFMNP and the FMNP may execute a single agreement that includes both programs, as long as any requirements specific to only one of the programs, such as CSA programs for the SFMNP, are included either in the body of or as an appendix to the agreement.

It is important that the agreement be signed by a representative who has the legal authority to obligate the farmer, farmers' market, roadside stand, and/or CSA program. The specific items that must be included in these agreements are listed in proposed § 249.10(b), but the State agency may determine the exact wording to be used.

The proposed rule also stipulates that the farmer, farmers' market, and/or roadside stand may neither seek restitution from SFMNP recipients for coupons not paid by the State agency, nor issue cash change for purchases that are in an amount less than the value of the SFMNP coupon(s). Regarding the second proposed prohibition, the Department recommends that SFMNP coupons be in small denominations, preferably $1 or $2, to present less of a problem in this area. Based on this recommendation, the difference between the purchase price and the value of the coupon should be less than $2. The Department, therefore, encourages farmers to adjust for any difference by adding more eligible produce to the purchase, such as an extra ear of corn or a small handful of cherries. Some State agencies, based on their experience with the FMNP, also encourage participating farmers to offer their produce for sale in units that are consistent with the coupon denominations, e.g., $2 baskets of tomatoes rather than $3 ones that would require the recipient to use $4 in coupons to make the $3 purchase.

Because they differ significantly from the traditional coupon model of SFMNP operations, the agreement provisions for CSA programs are set out separately under proposed § 249.10(b)(3) and (b)(4).

c. Training

Pursuant to § 249.10(d), FNS is proposing that State agencies conduct annual training for farmers, farmers' market managers, and (as appropriate) CSA program managers. State agencies have discretion in determining the method used for training purposes. Training must include, at a minimum, dissemination of information concerning eligible foods, proper SFMNP coupon redemption procedures, including deadlines for submission of coupons for payment, and/or receipt of payment for CSA programs' distribution of eligible foods. Other points that must be covered in training are listed at proposed § 249.10(d).

Although these regulations would permit State agency discretion in determining the method of annual training, the State agency would be required to conduct a documented on-site visit. The visit could occur prior to or at the time of authorization, and must include, at a minimum, information concerning eligible foods, proper coupon redemption procedures, and/or proper payment procedures for CSA programs. For example, in a State with a 3-year agreement, a State agency could conduct an in-person training prior to or at the time of authorization, and if the agreement is renewed 3 years later, conduct another in-person training at least once during the next 3-year period. Other less comprehensive forms of training such as information handouts may be more appropriate for State agencies in the second or third years of operation under a SFMNP agreement. If a farmer or farmers' market is authorized to participate in both the SFMNP and the FMNP, State agencies are encouraged to consolidate the training offered to include both programs in the same visit or other training activity. However, State agencies must be careful to ensure that the differences between the SFMNP and the FMNP, such as different-colored coupons or checks, are highlighted in the training that is provided.

d. Monitoring

The SFMNP has not had specific monitoring requirements as a competitive grant program, although grantees have been responsible for ensuring that only authorized outlets

accepted SFMNP coupons. In the case of CSA programs, grantees have been required to ensure that only authorized outlets accepted SFMNP funds; that only eligible foods were purchased with SFMNP monies; that no cash change was given for coupons. The monitoring requirements set out at § 249.10(e) of the proposed rule are identical to those required under the FMNP, most of which have their basis in the experience gleaned from the FMNP demonstration projects that were operated from 1989 through 1991.

Pursuant to the proposed rule, State agencies would be required to conduct on-site monitoring visits to at least: 10 percent of authorized farmers, starting with the highest risk farmers and working down; 10 percent of the highest risk farmers' markets and working down; and if applicable, 10 percent of the highest risk CSA programs and working down. Mandatory high-risk indicators are set out at § 249.10(e)(2)(ii) of this proposed rule.

Participating State agencies have the option to conduct compliance buys and the Department encourages such activity when possible. A State agency may be required to conduct compliance buys as a follow-up measure when a farmer/farmers' market in a State is found to be out of compliance during an FNS management evaluation.

Compliance activity can provide an objective measure of whether farmer training is adequate and whether farmers are following SFMNP rules such as not providing change, selling or providing only eligible foods to SFMNP recipients, and ensuring participation only by authorized farmers. In addition, compliance buys can induce compliance and provide a justification for sanctions and removal of noncompliant farmers.

e. Coupon Control and Payment

Under proposed § 249.10(f), State agencies would be responsible for the overall control and accountability of the receipt and issuance of SFMNP coupons. The State agency must also ensure that there is secure transportation and storage of unissued SFMNP coupons, and must design and implement a system of review of SFMNP coupons to detect errors. At a minimum, such errors must include a missing recipient signature (if required by the State agency), a missing farmer and/or market identifier, and redemption by a farmer outside of the valid date. The State agency must also implement procedures to reduce the number of errors in transactions, where possible. Section 249.10(g) of the proposed rule would require State agencies to ensure that farmers, farmers' markets, roadside stands, and/or CSA programs are promptly paid for all legitimate food costs.

f. Coupon Reconciliation

Section 249.10(h), as proposed, requires the State agency to identify the disposition of all SFMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. This identification must be determined on a one-to-one reconciliation basis. Validly redeemed coupons are those that are issued to a certified recipient or his/her proxy, and redeemed by an authorized farmer, farmers' market, or roadside stand before the expiration date. Coupons that are redeemed but cannot be traced to a certified recipient/proxy or authorized farmer will be subject to claims action in accordance with § 249.20 of this proposed rule. A State agency has the option to replace lost, stolen, or damaged coupons (or proof of shareholder status, for CSA programs), and must describe its system for doing so in the State Plan of Operations. A State agency must use uniform SFMNP coupons within its jurisdiction, which must include at a minimum, the specific information as proposed at § 249.10(h)(3).

Inclusion of individual farmer identifiers on all SFMNP coupons is a requirement in the SFMNP in this proposed rule in order to trace coupon redemption to an authorized farmer. This procedure is consistent with the system currently in place for FMNP coupon reconciliation. State agencies have the option to authorize either farmers' markets, individual farmers, or both. However, if the State agency authorizes farmers' markets and not farmers, an individual farmer identifier must be included on the coupon and a farmers' market identifier included on the batch set of coupons submitted by the farmers' market manager for reimbursement. Those State agencies that have agreements directly with individual farmers and not markets must include individual farmer identifiers on each redeemed coupon. A farmer identifier will provide protection for the farmers' market, because it is the individual farmer who may be identified and penalized for abuse rather than the entire market, if appropriate.

g. Instructions to Recipients

In order for the SFMNP to be fully successful, § 249.10(i) proposes that each SFMNP recipient receive instructions on the proper use of coupons, or participation in a CSA program (where applicable). Section 249.10(i) provides minimum standards for recipient education, including where and when SFMNP coupons may be used; what foods can be purchased with the checks or coupons; a reminder that cash change cannot be given for SFMNP purchases; how to designate a proxy or authorized representative if the recipient cannot do his/her own shopping; and how to complain about any aspect of the SFMNP that may be troublesome or unsatisfactory. SFMNP recipients who will be participating in the program through a CSA will also need information about the participating farmer(s) in the CSA; what foods will be provided to them; how often the foods will be distributed; and where it can be picked up.

h. Complaints and Sanctions

Consistent with requirements already in place for the FMNP, proposed § 249.10(j) requires that the State agency have procedures in place to document the handling of complaints from recipients and farmers/farmers' markets, roadside stands, and/or CSA programs. Complaints and allegations of civil rights discrimination are to be handled in accordance with § 249.7(b) of this proposed rule.

Section 249.10(k) proposes a number of provisions related to sanctions that would be applied in the SFMNP. The State agency would be required to establish policies that determine the type and level of sanctions to be applied against recipients and farmers, farmers' markets, roadside stands, and/or CSA programs, based on the severity and nature of the SFMNP violations observed, and such other factors as the State agency may determine to be appropriate. Farmers, farmers' markets, roadside stands, and/or CSA programs may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper SFMNP coupon redemption procedures and the penalties outlined in § 249.20, in cases of deliberate fraud.

As mentioned earlier in this preamble, in those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer, farmers' market, and/or roadside stand sanctions. Any authorized farmer or outlet committing fraud or other unlawful activities is liable to prosecution under applicable Federal, State or local laws.

State agency policies are required to ensure that a farmer who is disqualified from the SFMNP at one market, roadside stand, or CSA program may not participate in the SFMNP at any other

farmers' market, roadside stand, or CSA program within the State agency's jurisdiction during the disqualification period. Finally, State agency policies must require that a farmer, farmers' market, roadside stand, and/or CSA program that is disqualified from participating in the FMNP is also disqualified from participating in the SFMNP under the State agency's jurisdiction during the disqualification period. In those State agencies where different agencies or offices administer the SFMNP and the FMNP, the respective State agencies must develop a system for the prompt exchange of such disqualification information, given the relatively short operating timeframe for these programs.

i. Community Supported Agriculture (CSA) Programs

As proposed in this rulemaking, the most significant difference between the FMNP and the SFMNP regarding market management procedures falls in the area of CSA programs, which are not allowable outlets for program funds in the FMNP. A detailed discussion of CSA programs and their unique requirements is provided below.

Since its inception, the SFMNP was designed to permit recipients to use program benefits to obtain fresh fruits and vegetables at farmers' markets, roadside stands, and/or through CSAs. The use of CSA programs is a different program model from the standard issuance of paper coupons that are used at the more popular farmers' markets and roadside stands. In this alternative program model for the SFMNP, shares of an individual grower's or a group of growers' crops for that season are purchased by the SFMNP State agency on behalf of a certain number of eligible senior recipients, at the beginning of the planting season. Once the crops are ready to be harvested, standard packages of eligible foods, depending on the variety and types of fruits and vegetables that are available, are assembled and delivered to a central location (such as the local senior center) for distribution, or are delivered directly to recipients' homes. The majority of State agencies that include a CSA program component in their SFMNP operations only do so on a limited basis, in combination with the more traditional coupon model. However, at least two State agencies have operated their SFMNP programs exclusively through the CSA program model since the SFMNP began in FY 2001.

A SFMNP State agency that operates exclusively through a CSA program presents some unique challenges for effective Departmental oversight of the program. When the SFMNP was initiated as a pilot program, State agencies were given considerable latitude in their program design. CSA-based program models help to promote innovative ways to assist the small farmer who may not have the resources to transport his harvest and set up a booth at an established market. They may also work very well for programs that target homebound seniors who cannot get to markets to select and purchase their own produce.

However, it is extremely difficult to ensure that program benefits are provided equitably to all recipients when CSAs are included as a component of the SFMNP. The actual value of the produce offered each week, or every other week, is dependent on a number of factors, some of which are entirely beyond the control of the farmer or the SFMNP State or local agency—weather, success of the crop, soil conditions, etc. If a SFMNP recipient is locked into a CSA program and one crop is unsuccessful, the recipient does not have the latitude simply to purchase another type of fruit or vegetable in its place or from an alternate authorized farmer. Currently, the benefit levels issued to coupon recipients may differ widely from the value of the shares provided to CSA program recipients within the same State when both program models are used.

These intrinsic uncertainties, combined with the fact that the mission of FNS includes making sure that all of the programs administered by this agency are focused on providing nutritional benefits to as many eligible recipients as possible, have led the Department to propose in this rulemaking at § 249.10(a)(3) that a State agency must limit the number of CSA programs to represent no more than 50 percent of the total Federal SFMNP food grant. This limitation is intended to allow the State agency the opportunity to work with its small farmers toward the development and use of a creative program operations model that also fulfills the expectations of programs funded through the Commodity Credit Corporation, yet balances the mission of FNS to ensure that recipients actually receive the food benefits in exchange for the coupons. The only exception to this requirement is allowed for SFMNP State agencies that are grandfathered into the SFMNP. A State agency that received a SFMNP grant under the competitive grant process and whose operations committed more than 50 percent of its SFMNP grant to a CSA program model before the implementation of this proposed rule may continue to use a larger portion of its grant for CSA's, at its discretion. However, all State agencies, regardless of grandfathered status, must abide by the requirements set forth in this rulemaking regarding maximum individual recipient benefit levels and accountability, as discussed at greater length later in this section of the preamble. State agencies that begin participation in the SFMNP after the publication of a final rule would not be permitted to use more than 50 percent of their grants for CSA program operations. This provision would also apply to current State agencies that under the competitive grant process did not exceed this limit.

The Department proposes to establish at § 249.8(b) one minimum and one maximum benefit level in the SFMNP, regardless of the program model used by the State agency. This requirement is likely to have a direct (and possibly prohibitive) impact on the CSA program models in use by SFMNP State agencies around the country. One of the difficulties FNS has encountered in its oversight of SFMNP State agencies that make extensive use of CSA programs to deliver program benefits to eligible recipients is the grantee's limited ability to attribute a specific benefit level to each individual recipient, and to ensure that the specific benefit level is consistently provided to each recipient. When crop shares are purchased at the beginning of the season, there is no positive assurance of the total value of produce that each shareholder will receive by the end of the season. Individual shares may be purchased, for example, at $100 each, but if there is a drought, flood, insect infestation or blight that adversely impacts the harvest, the farmer holding the SFMNP contract(s) may not be able to provide the full value of produce that was initially purchased by the State agency. In the more traditional coupon issuance system, however, if one farmer experiences a problem with his production, the SFMNP recipient still has a negotiable currency that can be used at another authorized farmer's booth and/or roadside stand.

Beyond the inherent risk of inequitable benefit distribution systems among SFMNP recipients, CSA programs also present a challenge in terms of general program accountability. Currently, State agencies can only estimate the per-recipient benefit level when CSA program shares are purchased. As the SFMNP matures, it becomes increasingly important to be able to collect and compile aggregate data on specific aspects of program operations. SFMNP State agencies have not been required to provide data at this level of detail up to now; with the

implementation of the SFMNP as a permanent nutrition assistance program, such information will be essential.

Therefore, in § 249.10(b)(3)(vi), the Department proposes to require State agencies to enter into written agreements with CSA programs, to ensure that CSA programs track the value of program benefits actually provided to individual recipients and the remaining value owed, provide State agencies with access to such a tracking system, and ensure that the value of program benefits provided is consistent with program requirements addressing minimum and maximum benefit levels for each recipient.

Finally, a few SFMNP State agencies have used a portion of their grants to purchase CSA program shares that are then used to supplement meals served at congregate feeding sites. While such a practice was technically allowable under the SFMNP competitive grants, primarily because there were no legislative or regulatory provisions to prevent it and the grants provided an opportunity to look at various program models, it is not consistent with the underlying intent of the SFMNP, which is to provide individual low-income seniors with a resource that benefits their diets directly, rather than through any type of congregate feeding program. Therefore, at § 249.12(a)(3), this proposed rule specifically prohibits the use of any SFMNP funds to supplement congregate meal programs.

11. Financial Management System (§ 249.11)

Based on the Department's experience with the SFMNP as a competitive grant program, participating SFMNP State agencies have financial management systems in place that provide accurate, current, and complete disclosure of the financial status of the SFMNP. State agencies have been cautioned expressly about the importance of maintaining separate accounts for the SFMNP and the FMNP, when applicable, and most State agencies are using a check system that expedites payment to farmers for SFMNP purchases. In accordance with the provisions of this proposed rulemaking, participating State agencies will be required to implement procedures that ensure prompt and accurate payment of allowable costs, and that ensure the allowability and allocability of costs in accordance with the cost provisions set forth in § 249.11 of this proposed rule, 7 CFR Part 3016, and FNS guidelines and Instructions.

12. SFMNP Costs (§ 249.12)

a. Administrative Funding

Since the inception of the SFMNP as a pilot program in fiscal year 2001, funds provided to State agencies through the competitive grant process have only been available to support the cost of the eligible foods obtained by SFMNP recipients. SFMNP grant funds have not been available to State agencies to cover any administrative costs associated with the operation and administration of the program, such as administrative oversight, printing coupons, coupon issuance, and/or authorization of farmers, farmers' markets, roadside stands, and/or CSA programs. Therefore, State agencies have heretofore been responsible for 100 percent of the administrative costs necessary to operate the SFMNP. In general, State agencies have indicated that their administrative costs for the SFMNP have amounted to approximately 16 percent above the total Federal grant awards.

Once the SFMNP is no longer operated as a competitive grant program and becomes one of the FNS' established nutrition assistance programs, there is a greater expectation that administrative costs be allowed as part of the Federal grant. Compensation for administrative costs is generally an allowable cost under FNS grant programs. However, SFMNP funds that are earmarked and used for administrative costs will reduce available program funds to provide eligible foods to eligible SFMNP recipients. The Department is willing, therefore, to allow a State agency to use up to 8 percent of its total Federal grant to defray administrative costs associated with the SFMNP, as described at § 249.12(a)(1)(i). This position is consistent with OMB Circular A–87 and the mission of this Agency to provide a level of administrative funding to help reasonably offset the costs for administering the program. The NAFMNP also supports allowing a portion of the Federal SFMNP grant funds to be used for administrative expenses.

b. Food and Administrative Costs

In light of the preceding discussion, FNS is proposing that SFMNP costs consist of both food and administrative costs. Food costs, as set forth in § 249.12(a)(1)(i) of this proposed rule, are the costs of eligible foods provided to SFMNP recipients. As discussed in Section 10 of this preamble, SFMNP funds may not be used to supplement congregate meal programs.

Administrative costs are those costs associated with providing benefits and services to recipients. A list of allowable administrative costs is set forth at proposed § 249.12(b).

13. SFMNP Income (§ 249.13)

Program income, as defined and explained in this proposed rule at § 249.13; means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. For example, if the SFMNP State agency, in the process of authorizing farmers and farmers' markets, also agrees to distribute an unrelated survey form to the farmers and markets visited by SFMNP staff on behalf of another State agency, the second State agency (who needs the survey form distributed) may agree to pay the SFMNP State agency a fee for performing this service. Any SFMNP income earned during the agreement period must be fully documented, retained by the SFMNP State agency, and used for SFMNP purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties, or assessments paid by local agencies or farmers, farmers' markets, roadside stands, and/or CSA programs are also deemed to be program income.

14. Distribution of Funds (§ 249.14)

a. Base Grants

In order to grandfather in those State agencies currently participating in the SFMNP competitive grant program, as previously discussed in Section 5 of this preamble, Selection of State Agencies, it is necessary to establish some fundamental principles for the allocation of SFMNP funds. In the grant program, the Department has established a base grant level for the SFMNP. For FYs 2002, 2003, and 2004, SFMNP grants were based on each State agency's expenditure level from the prior fiscal year. Using this process, grant awards could not be announced until after closeout of the prior FY's operations in order to determine each State agency's prior year expenditure level. Many State agencies begin to plan program operations, print coupons, and certify senior recipients in advance of the announcement of grant awards. Basing SFMNP grants on expenditure levels from the prior year presents challenges for State agencies in their ability to plan current and future SFMNP operations effectively.

Therefore, § 249.14(b) proposes that the base grant levels will be based on the prior fiscal year's grant levels, rather than on that fiscal year's expenditure levels. Providing each State agency a base grant level that consists of the total Federal funds received in the prior year allows them to plan their program operations more effectively and accurately. This procedure is also consistent with the allocation of FMNP base grants, and many SFMNP State agencies participate in both programs. Since the two programs are similar in their operations and their missions, there is interest in making SFMNP and FMNP requirements consistent wherever possible.

In proposed § 249.14(c), the Department states that if amounts appropriated for any fiscal year for the SFMNP are not sufficient to maintain prior fiscal year funding levels for each State participating in the SFMNP, each State's grant will be ratably reduced by FNS. For example, a State agency whose prior fiscal year's final grant represented 10 percent of the total SFMNP allocation in that fiscal year would receive 10 percent of whatever amount of funding is available for the SFMNP in the current fiscal year.

b. Expansion Funding

For FY 2003 and FY 2004, current SFMNP State agencies wanting to expand, and new State agencies wanting to participate in the SFMNP for the first time, competed equally for the money left over after funding current States at their prior year's expenditure (base grant) levels. Given that the SFMNP is relatively new and with the initial success of the program, many current State agencies will likely want to expand their programs, and new State agencies will want to participate in the program. Additionally, in the first year of the SFMNP's operation as a permanent program, currently participating State agencies may need to request additional funds to replace those monies that may now be used to defray administrative expenses. Other State agencies that have been providing recipients with a benefit level lower than the minimum of $20 established in § 249.8 of this proposed rule may need to request additional SFMNP funds in order to bring their program fully into compliance with the proposed requirements. Therefore, while the Department in no way guarantees that State agencies in either of these situations will be provided the additional funds they may need, a funding structure is needed to accommodate growth in both areas. The FMNP regulations at 7 CFR 248.14 provide a funding structure for expansion of participating State agencies and new State agencies that could be used in the SFMNP. Under this FMNP regulation, after satisfying base grants, 75 percent of the remaining funding is available to those State agencies that wish to serve additional recipients, increase benefit levels, or offer program services in additional areas within the State. The remaining 25 percent is available to State agencies that have not previously participated in the FMNP. If either amount is greater than that necessary to satisfy requests for that category (*e.g.*, current State agencies), the unallocated amount is then applied toward satisfying any unmet need in the other category (*e.g.*, new State agencies). The Department describes at proposed § 249.14(d) through (f) its intention to adopt this same process for the SFMNP. This will allow current State agencies to expand, and still allow new State agencies to participate in the SFMNP. Also, this process will provide consistency between the SFMNP and the FMNP. FNS' proposal is consistent with the NAFMNP recommendations that a funding structure and regulations be developed for the SFMNP that allow for the addition of new SFMNP State agencies.

15. Closeout Procedures (§ 249.15)

This section of the proposed rule requires SFMNP State agencies to submit to FNS a final closeout report for each fiscal year on a form and by a date specified by FNS. It also establishes procedures to be followed, in accordance with 7 CFR Part 3016, when SFMNP grants to State agencies are terminated. All of the provisions proposed at § 249.15 are identical to those currently in place for the FMNP under 7 CFR Part 248.

16. Administrative Appeal of State Agency Decisions (§ 249.16)

As proposed in § 249.16 of this rulemaking, SFMNP State agencies will be required to provide a hearing procedure whereby any entity (applicants, recipients, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs) adversely affected by certain actions of the State agency may appeal those actions. This section provides a list of the adverse actions that may be appealed. It also sets out the procedures that must be followed when an appeal is requested, and clarifies that appealing an adverse action does not relieve the entity that has been permitted to continue in the SFMNP while its appeal is pending from responsibility for continued compliance with the terms of the written agreement or contract with the State agency. Finally, § 249.16 would require that the State agency explain the appellant's right to judicial review of any State level decision rendered against the appellant, and sets forth additional proposed appeals procedures for State agencies that authorize farmers' markets rather than individual farmers.

17. Management Evaluations and Reviews (§ 249.17)

This proposed rulemaking would require FNS and each SFMNP State agency to establish a management evaluation system in order to assess the accomplishment of SFMNP objectives, the State Plan, and the written agreement with the Department. FNS will provide assistance to State agencies in discharging this responsibility, will establish standards and procedures to determine how well the objectives of this Part are being accomplished, and will implement sanction procedures as warranted by State SFMNP performance.

The monitoring responsibilities of the SFMNP State agency (set out at proposed § 249.17(c)) would be the same as those in place for the FMNP. As in the FMNP, this proposed rule would mandate that an authorized outlet's first year of operation in the SFMNP be considered a high-risk indicator. Other indicators are to be defined by the State agency. This section also proposes that all local SFMNP agencies within the State agency's jurisdiction be reviewed at least once every two years, and itemizes the aspects of program operation that should be monitored. Monitoring activities for the SFMNP and the FMNP should be coordinated and consolidated when a State agency administers both programs.

18. Audits (§ 249.18)

SFMNP programs would be subject to audits under the same terms and conditions as the FMNP. This section assures access to any books, records, papers, and documents of the State agency and its contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts, by the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or by duly authorized State auditors. This section also describes the ability of the State agency to take exception to particular audit findings and recommendations, and the process to be used by FNS in obtaining corrective action regarding any SFMNP deficiencies identified in an audit. Finally, the Department requires State

and local SFMNP agencies to conduct independent audits in accordance with 7 CFR part 3015, § 3016.26, or part 3051, as applicable, and allows a State or local agency to elect to obtain either an organization-wide audit or an audit of the SFMNP if it qualifies to make such an election under applicable regulations.

19. Investigations (§ 249.19)

The Department would be allowed under this proposal to make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. Further, under this proposed rule, at § 249.19(b), the identity of every complainant must be kept confidential except to the extent necessary to carry out the investigation, or any related administrative hearing or judicial proceeding.

20. Claims and penalties (§ 249.20)

This section identifies the circumstances under which the Department could assess a claim against a State agency, and establishes opportunity for the State agency to submit evidence, explanations, or information challenging such claim. The proposed rule also stipulates that interest must be charged on any outstanding claim or the unpaid balance of such a claim, and sets forth the penalties that must be applied in the event of embezzlement, willful misapplication, theft, or the fraudulent acquisition of any funds, assets, or property associated with the SFMNP. Such penalties may involve monetary restitution, imprisonment, or both.

21. Procurement and Property Management (§ 249.21)

SFMNP State agencies would be required under this rule to comply with the same requirements set forth for the FMNP, at 7 CFR 248.21, for the procurement of supplies, equipment, and other services with SFMNP funds. These requirements are proposed by FNS to ensure that such materials and services are obtained for the SFMNP in an effective manner and in compliance with the provisions of applicable law and executive orders. The State agency is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the SFMNP. However, the State agency may use its own procurement regulations that reflect applicable State and local regulations, as long as procurements made with SFMNP funds adhere to the standards set forth in 7 CFR part 3016.

22. Nonprocurement/Suspension, Drug-Free Workplace, and Lobbying Restrictions (§ 249.22)

SFMNP State agencies, under this proposed rule, are required to ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment and suspension (7 CFR 3017), drug-free workplace (7 CFR 3021), and the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

23. Records and Reports (§ 249.23)

The Department proposes to require each State agency to maintain full and complete records concerning SFMNP operations. This section sets forth the types of records that must be maintained, the retention requirements for such records, and the requirements pertaining to access and availability of such records. The Department also requires State agencies to submit financial and SFMNP performance data on a yearly basis as specified by FNS, and identifies the minimum data that must be reported. Source documentation should be on file for all financial and SFMNP performance reports. These reports will also need to be certified as complete and accurate by the person given that responsibility by the State agency. The Department intends to use State agency reports to measure progress in achieving objectives set forth in the State Plan, the SFMNP regulations, and/or other State agency performance plans.

24. Confidentiality (§ 249.24)

Consistent with the FMNP regulations, 7 CFR 248.24(c), the Department proposes that State agencies restrict the use or disclosure of information obtained from SFMNP applicants and recipients and generated by the program to certain individuals and/or entities. To ensure confidentiality, SFMNP State agencies may execute a written agreement to share certain information with other public organizations designated by the chief State agency officer that administer food, nutrition, or other assistance programs that serve persons categorically eligible for the SFMNP. Proposed § 249.24(b) sets forth the specific terms of such a written agreement.

25. Other Provisions (§ 249.25)

SFMNP recipients are often eligible to receive benefits under other Federal or State food or nutrition assistance programs, such as the Food Stamp Program, CSFP, or Meals on Wheels. Proposed § 249.25(a) would clarify that participation in the SFMNP does not preclude a recipient from participating in food or nutrition assistance programs for which s/he may also be eligible. It also delineates, in proposed § 249.25(b), the circumstances and conditions under which FNS is authorized to use information that is obtained from the SFMNP.

26. SFMNP Information (§ 249.26)

This section lists the seven Regional offices of FNS, provides their contact information, and identifies the State agencies that are covered by each one.

27. OMB Control Number (§ 249.27)

When provided, this section will identify the control number assigned by the Office of Management and Budget indicating its approval of the collection of information requirements for Part 249.

List of Subjects in 7 CFR Part 249

Aging, Community supported agriculture programs, Elderly, Farmers, Farmers' Markets, Food assistance programs, Food donations, Grant programs, Nutrition education, Public assistance programs, Seniors, Social programs.

Accordingly, 7 CFR part 249 is added to read as follows:

PART 249—SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

Subpart A—General

Sec.

Subpart B—State Agency Eligibility

Subpart C—Recipient Eligibility

Subpart D—Recipient Benefits

Subpart E—State Agency Provisions

Subpart F—Monitoring and Review of State Agencies

Authority: 7 U.S.C. 3007.

Subpart A—General

§ 249.1 General purpose and scope.

(a) This part announces regulations under which the Secretary of Agriculture shall carry out the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to:

(1) Provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs from farmers' markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors;

(2) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSAs; and

(3) Develop or aid in the development of new and additional farmers' markets, roadside stands, and CSAs.

(b) These goals will be accomplished through payment of cash grants to approved State agencies. The SFMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011, *et seq.*), and to any other Federal or State food or nutrition assistance program under which foods are distributed to needy families in lieu of food stamps.

§ 249.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

Administrative costs means those direct and indirect costs (as defined in § 249.12(a)(1)(ii)), exclusive of food costs, which State agencies determine to be necessary to support SFMNP operations. Administrative costs include, but are not limited to, the costs associated with administration and start-up; the provision of nutrition education; SFMNP coupon issuance; recipient education covering proposed coupon redemption procedures; eligibility determinations; outreach services; printing SFMNP coupons, processing redeemed coupons, and training farmers, market managers, and/or farmers who operate CSA programs on the food delivery system; monitoring and reviewing Program operations; required reporting and recordkeeping; determining which local sites will be utilized; recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP; preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs; developing a data processing system for redemption and reconciliation of coupons; designing program training and informational materials; and coordinating SFMNP implementation responsibilities between designated administering agencies.

Community supported agriculture (CSA) program means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. State agencies may purchase shares or subscribe to a community supported agriculture program on behalf of individual SFMNP recipients.

Compliance buy means a covert, on-site investigation in which a SFMNP representative poses as a SFMNP recipient or authorized representative and attempts to transact one or more SFMNP coupons, or, in the case of CSA programs, attempts to obtain eligible foods purchased with SFMNP funds at a distribution site.

Coupon means a check or other negotiable financial instrument by which benefits under the program are transferred to program recipients.

Days means calendar days.

Department means the U.S. Department of Agriculture.

Distribution site means the location where packages of eligible foods are assembled for and/or distributed to SFMNP recipients who are shareholders in CSA programs.

Eligible foods means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese and seafood are also not eligible foods for purposes of the SFMNP.

Farmer means an individual authorized to sell eligible foods at participating farmers' markets and/or roadside stands, and through CSAs. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP. A participating State agency has the option to authorize individual farmers or farmers' markets, roadside stands, and/or CSA programs.

Farmers' market means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

Federally recognized Indian tribal government means the same as the definition of that term found at 7 CFR 3016.3, *i.e.*, the governing body or a governmental agency of any Indian tribe, band, organization, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Fiscal year means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food costs means the cost of eligible foods purchased at authorized farmers' markets, roadside stands, and/or through CSA programs.

Household means a group of related or nonrelated individuals who are living together as one economic unit.

Local agency means any nonprofit entity or local government agency that certifies eligible recipients, issues SFMNP coupons, arranges for distribution of eligible foods through CSA programs, and/or provides nutrition education or information on operational aspects of the Program to SFMNP recipients.

Locally grown means grown within the borders of the State that the project serves. If the State agency chooses, "locally grown" may also mean grown in areas of States adjacent to that State, as long as such areas are part of the United States.

Nonprofit agency means a private agency that is exempt from the payment of Federal income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1, *et seq.*).

Nutrition education means:

(1) Individual or group sessions; and

(2) The provision of relevant materials, in keeping with the individual's personal, cultural, and socioeconomic preferences and the Dietary Guidelines for Americans, that:

(i) Emphasize relationships between nutrition and health; and

(ii) Encourage participants to build healthful eating patterns, and to take action for good health.

OIG means the Department's Office of Inspector General.

Program or SFMNP means the Senior Farmers' Market Nutrition Program authorized by Section 4402 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 3007.

Proxy means an individual authorized by an eligible senior to act on the senior's behalf, including application for certification, receipt of SFMNP coupons or other benefits, use of SFMNP coupons at authorized outlets, and/or acceptance of SFMNP foods provided through a CSA program, as long as the SFMNP benefits are ultimately received by the eligible senior. The terms "proxy" and "authorized representative" may be used interchangeably for purposes of this program.

Recipient means a person or household who meets the eligibility requirements of the SFMNP and to whom coupons or equivalent benefits have been issued.

Roadside stand means a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market or through a CSA program. The term "roadside stand" may be used interchangeably with the term "farmstand" as defined in § 248.2 of this chapter.

Senior means an individual 60 years of age or older, or as defined in § 249.6(a)(1).

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

Shareholder means a SFMNP recipient for whom a full or partial share in a community supported agriculture program has been purchased by the State agency, and who receives SFMNP benefits in the form of actual eligible foods rather than coupons that must be exchanged for eligible foods at farmers' markets and/or roadside stands.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and as applicable, American Samoa or the Commonwealth of the Northern Marianas.

State agency means the agriculture, aging, or health department, or any other agency approved by the Chief Executive Officer of the State that has administrative responsibility for the SFMNP; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service, a division of the Department of Health and Human Services.

State Plan means a plan of SFMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the SFMNP within its jurisdiction in accordance with § 249.4.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

WIC Farmers' Market Nutrition Program (FMNP) means the nutrition assistance program authorized by Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)), to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets.

§ 249.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the SFMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for SFMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of SFMNP operations to ensure that the goals of the SFMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the SFMNP in accordance with the requirements of this Part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (7 CFR part 3016), nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3021), and lobbying (7 CFR part 3018); FNS guidelines; FNS Instructions issued under the FNS Directives Management System; and Office of Management and Budget Circular A–130 (For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3). The State agency shall provide guidance to cooperating State and local agencies on all aspects of SFMNP operations. State agencies may operate the SFMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the SFMNP shall annually submit a State Plan of Operations and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this Part. If the State agency administers both the SFMNP and the WIC Farmers' Market Nutrition Program (FMNP), one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS.

(d) *Coordination with other agencies.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and any other State, local, or nonprofit agencies or entities involved in administering any aspect of the SFMNP by ensuring that the agencies enter into a written agreement. The written agreement shall delineate the responsibilities of each agency, describe any compensation for services, and shall be signed by the designated representative of each agency.

This agreement shall be submitted each year along with the State Plan.

(e) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to administer the SFMNP efficiently and effectively. This shall include, but not be limited to, sufficient staff to identify and certify eligible SFMNP recipients, provide program information and nutrition education to recipients, and to oversee coupon, market, and/or CSA program management, fiscal reporting, monitoring, and training. The State agency shall provide in its State Plan an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds.

Subpart B—State Agency Eligibility

§ 249.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. If the

State agency administers both the SFMNP and the FMNP, one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS. The State Plan must be signed by the State-designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Portions of the State Plan that do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must include the following items, which must include sufficient detail to demonstrate the State agency's ability to meet the requirements of the SFMNP:

(1) A copy of the agreement between the designated administering State agency and any other cooperating State, local, or nonprofit agencies or organizations for services such as certification of eligible recipients, issuance of SFMNP coupons or benefits, and/or nutrition education, as required in § 249.3(d).

(2) A description of the State agency's procedures for identifying and certifying eligible SFMNP recipients, including the specific age and income criteria that will be used to determine SFMNP eligibility.

(3) An estimated number of recipients for the fiscal year, and proposed months of operation.

(4) A detailed budget for the SFMNP, including:

(i) The minimum amount necessary to operate the SFMNP;

(ii) A description of the Federal and non-Federal funds that will be used to operate the Program; and

(iii) An assurance that no more than 50 percent of the Federal SFMNP grant will be used to support a CSA program model for the delivery of SFMNP benefits.

(5) An outline of administrative staff and job descriptions.

(6) A detailed description of the SFMNP recordkeeping system including, but not limited to, the system for maintaining separate records for SFMNP funds pertaining to financial operations, coupon issuance and redemption, authorization of farmers, markets, and/or CSA programs, distribution of eligible foods through CSA programs, and SFMNP participation.

(7) A detailed description of the State agency's financial management system, including how the system will provide accurate, current and complete disclosure of the program's financial status and required reports.

(8) A detailed description of the service area, including:

(i) the number and addresses of authorized participating markets, roadside stands, and community supported agriculture programs; and

(ii) SFMNP certification/issuance sites (such as senior centers or senior housing facilities), including a map outlining the service area and proximity of markets, roadside stands, and/or community supported agriculture programs to certification/issuance or distribution sites.

(9) A description of the coupon issuance system including:

(i) A description of how the State agency will target areas with the highest concentrations of eligible persons and greatest access to farmers' markets and/or roadside stands;

(ii) The benefit level per recipient, or household if benefits are issued on a household basis, including:

(A) How coupons will be issued;

(B) The value of benefits provided to each recipient or household at each issuance during the year;

(C) The frequency of coupon issuance; and

(D) The total amount of SFMNP benefits issued to each recipient or household during the year;

(iii) A method for instructing recipients on the proper use of SFMNP coupons and the purpose of the SFMNP;

(iv) A method for ensuring that SFMNP coupons are issued only to eligible recipients; and

(v) A method for preventing and identifying dual participation in accordance with § 249.6(d)(1).

(10) If the agency is using a "paperless" system, *i.e.*, a system that does not issue actual coupons, a complete description of how such a system will be operated in a manner that ensures the integrity of SFMNP funds and benefits.

(11) A detailed description of the SFMNP coupon redemption process including:

(i) The procedures for ensuring the secure transportation and storage of SFMNP coupons;

(ii) A system for identifying and reconciling SFMNP coupons; and

(iii) The timeframes for SFMNP coupon redemption by recipients, submission for payment by farmers or authorized outlets (farmers' markets and/or roadside stands), and payment by the State agency.

(12) A description of the State agency's CSA program, if applicable, including:

(i) How the State agency will target and select community supported agriculture programs designed to provide SFMNP benefits to eligible recipients;

(ii) The annual benefit amount per recipient or household, if benefits are issued on a household basis;

(iii) How CSA program contracts are developed, negotiated, and executed by the State agency;

(iv) How CSA program shares are allocated to eligible SFMNP recipients;

(v) A method for instructing recipients and farmers participating in the CSA program on the purpose of the SFMNP, and the procedures for delivery and distribution of eligible foods provided for the SFMNP through the CSA;

(vi) A system to ensure receipt by eligible recipients of eligible foods provided through a CSA program. Such a system should include a written receipt or distribution log, with the recipient's signature (or that of the eligible recipient's proxy, if proxies are allowed) and the date of each distribution;

(vii) The payment procedures for the CSA program(s) used by the State agency;

(viii) How the State agency ensures that the full value of eligible foods for which it has contracted is provided regularly throughout the SFMNP season;

(ix) A listing of delivery dates and distribution sites for CSA program-provided eligible foods; and

(x) A system for ensuring that each SFMNP shareholder receives an equitable amount of eligible foods at each delivery, and that the total value of the eligible foods provided under the SFMNP falls within the minimum and maximum Federal SFMNP benefit levels, as specified in § 249.8(b).

(13) A complete description of age- and circumstance-appropriate nutrition education to be provided to SFMNP recipients, including:

(i) The agencies that will provide the nutrition education;

(ii) The format(s) in which the nutrition education will be provided; and

(iii) The locations where nutrition education is likely to be provided.

(14) A detailed description of the State agency's system for managing its coupon, market, and CSA program management systems, including:

(i) The criteria for authorizing farmers' markets, roadside stands, and/or community supported agriculture programs, including the agency responsible for authorization;

(ii) The procedures for training farmers, market managers, and/or CSA

program farmers at authorization, and annually thereafter;

(iii) The procedures for monitoring farmers' markets, roadside stands, and/or community supported agriculture programs;

(iv) A description of the State agency's system for identifying high-risk farmers and farmers' markets, roadside stands, and/or community supported agriculture programs, as set forth at § 249.10(e)(2)(ii);

(v) The procedures for sanctioning farmers, farmers' markets, roadside stands, and/or community supported agriculture programs;

(vi) A facsimile of the SFMNP coupon, including the denominations of coupons that will be issued, and a clear indication of where the recipient/proxy and (if applicable) farmer are required to sign, stamp, or otherwise endorse the coupon before it can be redeemed;

(vii) A complete listing of the fresh, nutritious, unprepared fruits, vegetables, and herbs eligible for purchase under the SFMNP;

(viii) A description of SFMNP coupon replacement policy or statement that coupons will not be replaced;

(ix) The State agency's procedures for handling recipient and farmer/farmers' market, roadside stands, and CSA program complaints.

(15) A system for ensuring that SFMNP coupons are redeemed only by authorized farmers/farmers' markets/roadside stands, and only for eligible foods.

(16) A system for identifying SFMNP coupons that are redeemed or submitted for payment outside valid dates or by unauthorized farmers/farmers' markets/roadside stands.

(17) A copy of the written agreement to be used between the State agency and authorized farmers/farmers' markets, roadside stands, and/or community supported agriculture programs. In those States that authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(18) If available, information on the change in consumption of fresh fruits, vegetables, and herbs by SFMNP recipients. This information shall be submitted as an addendum to the State Plan and shall be submitted at a date specified by the Secretary.

(19) If available, information on the effects of the program on farmers' markets, roadside stands, and/or community supported agriculture programs. This information shall be submitted as an addendum to the State Plan and shall be submitted at a date specified by the Secretary.

(20) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 249.7(a), including the processing of discrimination complaints.

(21) A copy of the State agency's fair hearing procedures for SFMNP recipients and the administrative appeal procedures for local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs.

(22) State agencies that have not previously participated in the SFMNP must provide:

(i) A description of the need for the SFMNP in that State agency;

(ii) The specific goals and objectives of the SFMNP, designed to fulfill the purpose of the Program as set forth in § 249.1; and

(iii) A capability statement that includes a summary description of any prior experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(23) For State agencies making expansion requests, documentation that demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving eligible SFMNP recipients by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets, roadside stands, and CSA programs;

(iii) The ability of the State agency to operate the existing SFMNP satisfactorily;

(iv) The management capabilities of the State agency to expand; and

(v) Whether, in the case of a State agency that intends to use the funding to increase the value of the Federal benefits received by a recipient, the funding provided will increase the rate of coupon redemption.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit such amendments to FNS for approval. The proposed amendments shall be signed by the State-designated official responsible for ensuring that the SFMNP is operated in accordance with the State Plan. The amendments must be approved by FNS prior to implementation.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

§ 249.5 Selection of new State agencies.

In selecting new State agencies, the Department will use objective criteria to rank and approve State plans submitted in accordance with § 249.4. In making this ranking, the Department will consider the amount of funds necessary to operate the SFMNP successfully in the State compared with other States and with the total amount of funds available to the SFMNP, the number of recipients estimated to be served, and the projected benefit level. Approval of a State Plan does not equate to an obligation on the part of the Department to fund the SFMNP within that State.

Subpart C—Recipient Eligibility

§ 249.6 Recipient eligibility.

(a) *Eligibility for certification.* Individuals who are eligible to receive Federal benefits under the SFMNP are those who meet the following criteria:

(1) *Categorical eligibility.* Recipients must be not less than 60 years of age, except that State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who are currently living in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits.

(2) *Residency requirement.* The State agency may establish a residency requirement for SFMNP applicants. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements.

(3) *Income eligibility.* The State agency must ensure that local agencies determine income eligibility through the use of a clear and simple application process approved by the State agency. Recipients must have a maximum household income of not more than 185 percent of the annual poverty income guidelines, or be determined automatically income eligible based on current participation/eligibility to receive benefits in another means-tested program, as designated by the State agency, for which income eligibility is set at or below 185 percent of the poverty income guidelines and for which documentation of family income

is required. FNS will announce the income poverty guidelines annually.

(b) *Documentation of income eligibility.* (1) *Automatically income eligible applicants.* The State or local agency must require applicants determined to be automatically income eligible to provide documentation of their eligibility to participate in another means-tested assistance program, as designated by the State agency.

(2) *Other applicants.* The State or local agency must require all other applicants to provide documentation of family income at certification.

(c) *Certification periods.* Recipients may be certified only for the current fiscal year's SFMNP period of operation. Eligibility must be determined at the beginning of each period of operation. Prior fiscal year certifications may not be carried over into subsequent fiscal years, but the State agency may make use of its recipient enrollment listings from the prior fiscal year in its outreach efforts for the current fiscal year.

(d) *Recipient rights and responsibilities.* Where a significant number or proportion of the population eligible to be served needs this information in a language other than English, reasonable steps must be taken to provide the information in the appropriate language(s) to such persons, considering the scope of the Program and the size and concentration of such population(s). In order to inform applicants and participants or their authorized representatives/proxies of SFMNP rights and responsibilities, State/local agencies must provide the following information:

(1) During the certification process, every program applicant or authorized representative must be informed of the illegality of dual participation, *i.e.*, obtaining SFMNP benefits from more than one service delivery area or from more than one SFMNP program model (coupon system and CSA program) within the same service delivery area.

(2) At the time of certification, each SFMNP applicant or authorized representative must read or have read to him or her the following statements or similar statements:

"I have been advised of my rights and obligations under the SFMNP. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being submitted in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts may result in paying the State agency, in cash, the value of the food benefits improperly issued to me and may subject me to civil or criminal prosecution under State and Federal law.

Standards for eligibility and participation in the SFMNP are the same for everyone, regardless of race, color, national origin, age, handicap, or sex.

I understand that I may appeal any decision made by the local agency regarding my eligibility for the SFMNP."

(3) At least during the initial certification visit, each recipient or authorized representative must:

(i) Receive an explanation of how to use his/her SFMNP coupons at farmers' markets and roadside stands, and/or how SFMNP foods will be provided under the CSA program in that service delivery area; and

(ii) Be advised of the other types of services that are available to SFMNP recipients, where such services are located, how they may be obtained, and why they may be useful.

(4) Persons found ineligible for the SFMNP during a certification visit must be advised in writing of their ineligibility, of the reasons for their ineligibility, and of their right to a fair hearing. The reasons for ineligibility must be properly documented and must be retained on file at the local agency.

(5) When a State or local agency pursues collection of a claim pursuant to § 249.20(c) against an individual who has been issued SFMNP benefits for which s/he is not eligible, the person must be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits that must be repaid, and of his/her right to a fair hearing.

(e) *Certification without charge.* Certification for the SFMNP must be performed at no cost to the applicant or the authorized representative.

(f) *Use of proxies or authorized representatives.* At the State agency's discretion, a senior may designate an authorized representative (proxy) to apply for certification, shop at the farmers' market or roadside stands, and/or pick up their eligible foods from CSA program distribution sites on his/her behalf if the senior is unable to perform these actions. The State agency must obtain a signed statement from the eligible senior designating another individual as his/her authorized representative. A senior who has been certified to receive SFMNP benefits may designate an authorized representative at any point during the program's period of operation.

(g) *Processing standards.* (1) Applicants for the SFMNP must be notified of their eligibility or ineligibility for benefits, or of their placement on a waiting list, as described in paragraph (g)(2) of this section, within 10 days from the date of application.

(2) When all available program benefits have been allocated to eligible recipients, the local agency must maintain a waiting list of individuals who contact the local agency to apply for the Program. Individuals must be notified of their placement on a waiting list within 10 days after they contact the local agency to request Program benefits. To enable the local agency to contact these individuals when caseload space becomes available, the waiting list must include the name of the applicant, the date placed on the waiting list, and an address or phone number of the applicant.

(h) *Limitations on certification.* If necessary to limit the number of recipients, State agencies may impose additional eligibility requirements, such as limiting recipient certification to certain geographic areas. Each State agency must specifically identify these limitations on certification in its State Plan.

§ 249.7 Nondiscrimination.

(a) *Civil rights requirements.* (1) The State agency must comply with the following requirements to ensure that no person shall, on the grounds of race, color, national origin, age, sex or disability, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the SFMNP:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972;

(iii) Section 504 of the Rehabilitation Act of 1973;

(iv) The Age Discrimination Act of 1975;

(v) Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b); and

(vi) Applicable FNS Instructions, including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency's racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964).

(2) Compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(i) Notification to the public of the nondiscrimination policy and complaint rights of recipients and potentially eligible persons, which may be satisfied

through the Department's required nondiscrimination statement on brochures and publications;

(ii) Review and monitoring activity to ensure SFMNP compliance with the nondiscrimination laws and regulations; and

(iii) Establishment of grievance procedures for handling recipient complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Civil Rights, USDA, Washington, DC 20250 or with the office established by the State agency to handle discrimination grievances or complaints. All complaints received by State agencies that allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or the Director of the Office of Civil Rights, USDA. A State agency may process complaints that allege discrimination based on sex or disability if grievance procedures are in place.

Subpart D—Recipient Benefits

§ 249.8 Level of benefits and eligible foods.

(a) *General.* State agencies must identify in the State Plan the fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs that are eligible for purchase under the SFMNP. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods in the SFMNP. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese, and seafood are also not eligible for purposes of the SFMNP. "Locally grown" means produce grown only within a State's borders but may be defined by State agencies to include border areas in adjacent States. Under no circumstances may produce grown outside of the United States and its territories be considered eligible food.

(b) *The value of the Federal benefits received.* The Federal SFMNP benefit level received by each recipient, whether individual or household, may not be less than $20 per year or more than $50 per year, except that recipients who are participating in the SFMNP through a CSA program may receive a higher total benefit level than recipients participating in a check or coupon program model, as long as that level is consistent for all Senior CSA program participants and does not exceed the $50 annual maximum per individual or household.

(c) *Recipient or household benefit allocation.* (1) All SFMNP recipients living in the areas served by the State agency must be offered the same amount of SFMNP benefits, regardless of the program model(s) used by that State agency.

(2) Benefits may be allocated on an individual or on a household basis.

(3) Foods provided are intended for the sole benefit of SFMNP recipients and are not to be shared with other non-participating household members.

(4) Recipients must receive SFMNP benefits free of charge.

§ 249.9 Nutrition education.

(a) *Goal.* Nutrition education shall emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fruits and vegetables.

(b) *Requirement.* The State agency shall integrate nutrition education into SFMNP operations and may satisfy nutrition education requirements through coordination with other agencies within the State. State agencies wishing to coordinate nutrition education with another State agency or organization must enter into a written cooperative agreement with such agencies to offer nutrition education relevant to the use and nutritional value of foods available to SFMNP recipients. In cases where SFMNP recipients are receiving relevant nutrition education from an agency other than the administering State agency, the provision of nutrition education is an allowable administrative cost under the SFMNP.

Subpart E—State Agency Provisions

§ 249.10 Coupon, market, and CSA program management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers, farmers' markets, roadside stands, and/or CSA programs. The State agency is responsible for the fiscal management of and accountability for SFMNP-related activities for farmers, farmers' markets, roadside stands, and CSA programs. Each State agency may decide whether to authorize individual farmers and farmers' markets separately, or to authorize only farmers' markets. In addition, each State agency may decide whether to authorize roadside stands and/or CSA programs. The State agency may authorize a farmer for participation in a farmers' market, a roadside stand, and/or CSA program simultaneously. All contracts or agreements entered into by the State agency for the management or operation of farmers, farmers' markets, roadside stands, and/or CSA programs shall conform with the requirements of 7 CFR part 3016.

(1) Only farmers, farmers' markets, and/or roadside stands authorized by the State agency may redeem SFMNP coupons. Only farmers authorized by the State agency, or having a valid agreement with an authorized farmers' market, may redeem coupons. Only CSA programs authorized by the State agency may receive payment from the State agency at the beginning of the planting season, in order to provide eligible foods to senior recipients who are shareholders.

(2) The State agency must establish criteria for the authorization of individual farmers and/or farmers' markets, roadside stands, and/or CSA programs. Any authorized farmer, farmers' market, roadside stand and/or CSA program must agree to sell recipients only those foods identified as eligible by the State agency. State agencies may determine farmers, farmers' markets and/or roadside stands as automatically authorized to participate in the SFMNP based on current authorization to operate in the FMNP under Part 248 of this chapter. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at roadside stands on behalf of local farmers.

(3) The State agency must ensure that an appropriate number of farmers, farmers' markets, roadside stands, and/or CSA programs are authorized for adequate recipient access in the area(s) proposed to be served and for effective management of the farmers, farmers' markets, roadside stands, and/or CSA programs by the State agency. The State agency may establish criteria to limit the number of authorized farmers, farmers' markets, and/or roadside stands. The State agency must limit the value of shares awarded to CSA programs to no more than 50 percent of their total Federal SFMNP food grant. The State agency shall make efforts to select the CSA program(s) that provides the greatest variety of eligible foods.

(4) The State agency shall ensure that face-to-face training is conducted prior to start up of the first year of SFMNP participation of an individual farmer, farmers' market, roadside stand, and/or

CSA program. The face-to-face training shall include at a minimum those items listed in paragraph (d) of this section.

(5) Authorized farmers shall display a sign stating that they are authorized to redeem SFMNP coupons.

(6) Authorized farmers, farmers' markets, roadside stands, and/or CSA programs shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FNS Instructions as outlined in § 249.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer, farmers' market, roadside stand and/or CSA program.

(b) *Farmer, farmers' market, roadside stand, and/or CSA program agreements.* The State agency shall ensure that all participating farmers' markets, roadside stands, and/or CSA programs enter into written agreements with the State agency. State agencies that authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement must be signed by a representative who has legal authority to obligate the farmer, farmers' market, roadside stand, and/or CSA program. Agreements must include a description of sanctions for noncompliance with SFMNP requirements and shall contain, at a minimum, the following specifications, although the State agency may determine the exact wording to be used:

(1) The farmer, farmers' market and/or roadside stand shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at or less than the price charged to other customers;

(iv) Accept SFMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer and/or roadside stand, each transacted SFMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency and the farmers' market, each transacted SFMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer SFMNP recipients the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in § 249.7; and

(xii) Notify the State agency if any farmer, farmers' market or roadside stand ceases operation prior to the end of the authorization period.

(2) The farmer, farmers' market and/or roadside stand shall neither:

(i) Seek restitution from SFMNP recipients for coupons not paid by the State agency; nor

(ii) Issue cash change for purchases that are in an amount less than the value of the SFMNP coupon(s).

(3) The CSA program shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP recipients receive only eligible foods;

(iii) Provide eligible foods to their SFMNP shareholders at or less than the price charged to other customers;

(iv) Assure that the shareholder receives eligible foods that are of equitable value and quantity to their share;

(v) Assure that all funds from the State agency are used for planting of crops for SFMNP shareholders;

(vi) Provide to the State agency access to a tracking system that determines the value of the eligible foods provided and the remaining value owed to each SFMNP shareholder;

(vii) Assure that SFMNP shareholders/authorized representatives provide written acknowledgement of receipt of eligible foods;

(viii) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities for such procedures;

(ix) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(x) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(xi) Offer SFMNP shareholders the same courtesies as other customers;

(xii) Notify the State agency immediately when the CSA program is experiencing a problem with its crops, and may be unable to provide SFMNP shareholders with the complete amount of eligible foods agreed upon between the CSA program and the State agency;

(xiii) Comply with the nondiscrimination provisions of USDA regulations as provided in § 249.7; and

(xiv) Notify the State agency if any CSA program ceases operation prior to the end of the authorization period.

(4) The CSA program shall not substitute ineligible produce when eligible foods are not available.

(5) Neither the State agency nor the farmer, farmers' market, roadside stand, and/or CSA program has an obligation to renew the agreement. The State agency or the farmer, farmers' market, roadside stand and/or CSA program may terminate the agreement for cause after providing advance written notification.

(6) The State agency may deny payment to the farmer, farmers' market and/or roadside stand for improperly redeemed SFMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(7) The State agency may demand a refund from any CSA program that fails to provide the full benefit to all SFMNP shareholders as specified in its contract, or that provides ineligible foods as substitutes for eligible foods.

(8) The State agency may disqualify a farmer, farmers' market, roadside stand, and/or CSA program for SFMNP violations. The farmer, farmers' market, roadside stand, and/or CSA program has the right to appeal a denial of an application to participate, a disqualification, or a SFMNP sanction by the State agency. Expiration of a contract or agreement with a farmer, farmers' market, roadside stand, and/or CSA program, and claims actions under § 249.20, are not appealable.

(9) A farmer, farmers' market, roadside stand, and/or CSA program, which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(10) Agreements may not exceed 3 years.

(c) *Agreements with farmers' markets that do not authorize individual farmers.* Those State agencies that authorize farmers' markets but not

individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in SFMNP. The State agency must set forth the required terms for the agreement and provide a sample agreement that may be used.

(d) *Annual training for farmers, farmers' market managers and/or farmers that operate a roadside stand or CSA program.* State agencies shall conduct annual training for farmers, farmers' market managers, and/or farmers who operate a CSA program in the SFMNP. The State agency must conduct a face-to-face training for all farmers and farmers' market managers who have never previously participated in the SFMNP. After a farmer/farmers' market manager's first year of SFMNP operation, State agencies have discretion in determining the method used for annual training purposes. At a minimum, annual training shall include instruction emphasizing:

(1) Eligible food choices;

(2) Proper SFMNP coupon redemption procedures, including deadlines for submission of coupons for payment, and/or receipt of payment for CSA programs' distribution of eligible foods;

(3) Equitable treatment of SFMNP recipients, including the availability of eligible foods to SFMNP recipients that are of the same quality and cost as that sold to other customers;

(4) Civil rights compliance and guidelines;

(5) Guidelines for storing SFMNP coupons safely; and

(6) Guidelines for cancelling SFMNP coupons, such as punching holes or rubber-stamping.

(e) *Monitoring and review of farmers, farmers' markets, roadside stands, CSA programs and local agencies.* The State agency shall be responsible for the monitoring of farmers, farmers' markets, roadside stands, CSA programs and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers, farmers' markets, roadside stands, and/or CSA programs, and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers, farmers' markets, roadside stands, and/or CSA programs as appropriate. In States where both the SFMNP and the FMNP are in operation, these monitoring/review requirements may be coordinated to avoid duplication. If the same farmers, farmers' markets, roadside stands, and/or CSA programs are authorized for both programs, a review conducted by one program may be counted toward the requirement for the other program.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market associations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2)(i) Each State agency shall rank participating farmers, farmers' markets, roadside stands, and/or CSA programs by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers, 10 percent of farmers' markets, 10 percent of roadside stands, and 10 percent of the CSA programs or one of each program model, whichever is greater, which shall include those farmers, farmers' markets, roadside stands, and/or CSA programs identified as being the highest-risk.

(ii) Mandatory high-risk indicators include:

(A) A proportionately high volume of SFMNP coupons redeemed by a farmer within a farmers' market or at a single roadside stand (as compared to other farmers within the farmers' market or within the State);

(B) Recipient complaints;

(C) In the case of CSA programs, an extended or ongoing inability to provide the full SFMNP benefit to each shareholder as contracted; and

(D) Farmers, farmers' markets, roadside stands, and/or CSA programs in their first year of SFMNP operation. States are encouraged to formally establish other high-risk indicators for identifying potential problems.

(iii) If additional high-risk indicators are established, they must be set forth in the farmers, farmers' market, roadside stand, and/or CSA program agreement and in the State Plan. If application of the high-risk indicators results in fewer than 10 percent of farmers, farmers' markets, roadside stands, and/or CSA programs being designated as high-risk, the State agency shall randomly select additional farmers, farmers' markets, roadside stands, and/or CSA programs to be monitored in order to meet the 10 percent minimum. The high-risk indicators listed above generally apply to a State agency already participating in the SFMNP. A State agency participating in the SFMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers, 10 percent of its participating farmers' markets, 10 percent of its participating roadside stands, and 10 percent of its participating CSA programs or at least one farmers' market, roadside stand, and/or CSA program, whichever is greater, for monitoring visits.

(3)(i) The following shall be documented for all on-site monitoring visits to farmers, farmers' markets, roadside stands, and/or CSA programs, at a minimum:

(A) Names of both the farmer, farmers' market, roadside stand, and/or CSA program and the reviewer;

(B) Date of review;

(C) Nature of problem(s) detected or the observation that the farmer, farmers' market, roadside stand, and/or CSA program appears to be in compliance with SFMNP requirements;

(D) Record of interviews with recipients, market managers, farmers, and/or farmers who operate a CSA program; and

(E) Signature of the reviewer.

(ii) Reviewers are not required to notify the farmer, farmers' market, roadside stand, and/or CSA program of the monitoring visit before, during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation.

(iii) In instances where the farmer, farmers' market, roadside stand, and/or CSA program will be permitted to continue participating in the SFMNP after being informed of any deficiencies detected by the monitoring visit, the farmer, farmers' market, roadside stand, and/or CSA program shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency must review all local agencies within its jurisdiction.

(f) *Control of SFMNP coupons.* The State agency must:

(1) Control and provide accountability for the receipt and issuance of SFMNP coupons;

(2) Ensure that there is secure transportation and storage of unissued SFMNP coupons; and

(3) Design and implement a system of review of SFMNP coupons to detect errors. At a minimum, the errors the system must detect are a missing recipient signature (if such signature is required by the State agency), a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency must implement procedures to reduce the number of errors in transactions, where possible.

(g) *Payment to farmers, farmers' markets, roadside stands, and/or CSA programs.* The State agency must ensure that farmers, farmers' markets, roadside stands, and/or CSA programs are promptly paid for food costs.

(h) *Reconciliation of SFMNP coupons.* The State agency shall identify the disposition of all SFMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed SFMNP coupons are those that are issued to a valid recipient and redeemed by an authorized farmer, farmers' market, and/or roadside stand within valid dates. SFMNP coupons that were redeemed but cannot be traced to a valid recipient or authorized farmer, farmers' market, and/or roadside stand shall be subject to claims action in accordance with § 249.20.

(1) If the State agency elects to replace lost, stolen or damaged SFMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency must use uniform SFMNP coupons within its jurisdiction.

(3) SFMNP coupons must include, at a minimum, the following information:

(i) The last date by which the recipient may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Financial statements are due to FNS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons that are batched by the market manager for reimbursement.

(i) *Instructions to recipients.* Each recipient must receive instruction on the redemption of the SFMNP coupons, or participation in a CSA program (where applicable), including, but not limited to:

(1) A list of names and addresses of authorized farmers, farmers' markets, and/or roadside stands at which SFMNP coupons may be redeemed, or procedures on the home-delivery process;

(2) Procedures to designate a proxy;

(3) The name and address of the authorized farmer of the CSA program, and locations of distribution sites;

(4) A description of eligible foods and the prohibition against cash change for SFMNP purchases of eligible foods;

(5) A description of eligible foods that will be provided through the CSA program;

(6) A schedule outlining a timeframe for distribution of the eligible foods from the CSA program; and

(7) An explanation of his/her right to complain about improper farmer, farmers' market, roadside stand, and/or CSA program practices with regard to SFMNP responsibilities and the process for doing so.

(j) *Recipient and farmer, farmers' market, roadside stand, and/or CSA program complaints.* The State agency must have procedures that document the handling of complaints from recipients and farmers/farmers' markets, roadside stands, and/or CSA programs. Complaints of civil rights discrimination shall be handled in accordance with § 249.7(b).

(k) *Recipient and farmer, farmers' market, roadside stand, and/or CSA program sanctions.* (1) The State agency must establish policies which determine the type and level of sanctions to be applied against recipients and farmers, farmers' markets, roadside stands, and/or CSA programs based upon the severity and nature of the SFMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers, farmers' markets, roadside stands, and/or CSA programs may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper SFMNP coupon redemption and the penalties outlined in § 249.20, in the case of deliberate fraud.

(2) In those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer, farmers' market, and/or roadside stand sanctions.

(3) A farmer, farmers' market, roadside stand, and/or CSA program committing fraud or other unlawful activities are liable to prosecution under applicable Federal, State or local laws.

(4) State agency policies must ensure that a farmer that is disqualified from the SFMNP at one market, roadside stand, or CSA program shall not participate in the SFMNP at any other farmers' market, roadside stand or CSA program in the State's jurisdiction during the disqualification period.

(5) State agency policies must ensure that a farmer, farmers' market, roadside stand, and/or CSA program that is disqualified from participating in the WIC Farmers' Market Nutrition Program is also disqualified from participating in the SFMNP in the State's jurisdiction during the disqualification period.

§ 249.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency must maintain a financial management system that provides accurate, current and complete disclosure of the financial status of the SFMNP. This must include an accounting for all property and other assets and all SFMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all SFMNP funds. The State agency must have effective internal controls to ensure that expenditures financed with SFMNP funds are authorized and properly chargeable to the SFMNP.

(c) *Record of expenditures.* The State agency must maintain records that adequately identify the source and use of funds expended for SFMNP activities. These records must contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency must implement procedures that ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR part 3016, and FNS guidelines and Instructions.

(e) *Identification of obligated funds.* The State agency must implement procedures that accurately identify obligated SFMNP funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures that ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Reconciliation of food instruments.* The State agency must reconcile SFMNP coupons in accordance with § 249.10(h).

(h) *Transfer of cash.* The State agency must establish the timing and amounts of its cash draws against its Letter of Credit in accordance with 31 CFR part 205.

§ 249.12 SFMNP costs.

(a) *General.* (1) *Composition of allowable costs.* In general, a cost item will be deemed allowable if it is

reasonable and necessary for SFMNP purposes and otherwise satisfies allowability criteria set forth in 7 CFR 3016.22 and this Part. SFMNP purposes include the administration and operation of the SFMNP. Allowable SFMNP costs may be classified as follows:

(i) *Food costs and administrative costs.* Food costs are the costs of eligible foods provided to SFMNP recipients. Administrative costs are the costs associated with providing SFMNP benefits and services to recipients and generally administering the SFMNP. Specific examples of allowable administrative costs are listed in paragraph (b) of this section. A State agency may use up to 8 percent of its total Federal SFMNP grant to cover administrative costs. Any costs incurred for food and/or administration above the Federal grant level will be the State agency's responsibility.

(ii) *Direct and indirect costs.* Direct costs are food and administrative costs incurred specifically for the SFMNP. Indirect costs are administrative costs that benefit multiple programs or activities, and cannot be identified to any one program or activity without effort disproportionate to the results achieved. In accordance with the provisions of 7 CFR part 3016, a claim for reimbursement of indirect costs shall be supported by an approved allocation plan for the determination of such costs. An indirect cost rate developed through such an allocation plan may not be applied to a base that includes food costs.

(2) *Costs allowable with prior approval.* A State or local agency must obtain prior approval in accordance with 7 CFR 3016.22 before charging to the SFMNP any capital expenditures and other cost items designated by 7 CFR 3016.22 as requiring such approval.

(3) *Unallowable costs.* Costs that are not reasonable and necessary for SFMNP purposes, or that do not otherwise satisfy the cost principles of 7 CFR 3016.22, are unallowable. Notwithstanding any other provision of 7 CFR Part 3016 or this Part, the cost of constructing or operating a farmers' market is unallowable. The use of SFMNP funds to supplement congregate meal programs is prohibited. Unallowable costs may never be claimed for Federal reimbursement.

(b) *Specified allowable administrative costs.* Allowable administrative costs include the following:

(1) The costs associated with administration and start-up;

(2) The costs associated with the provision of nutrition education that meets the requirements of § 249.9;

(3) The costs of SFMNP coupon issuance, or recipient education covering proper coupon redemption procedures;

(4) The cost of eligibility determinations and outreach services;

(5) The costs associated with the coupon and market management process, such as printing SFMNP coupons, processing redeemed coupons, and training farmers, market managers, and/or farmers who operate CSA programs on SFMNP operations;

(6) The cost of monitoring and reviewing Program operations;

(7) The cost of SFMNP training;

(8) The cost of required reporting and recordkeeping;

(9) The cost of determining which local sites will be utilized;

(10) The cost of recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP;

(11) The cost of preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs;

(12) The cost of developing a data processing system for redemption and reconciliation of SFMNP coupons;

(13) The cost of designing program training and informational materials; and

(14) The cost of coordinating SFMNP responsibilities between designated administering agencies.

§ 249.13 Program income.

Program income means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. The State agency must retain Program income earned during the agreement period and use it for Program purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties or assessments paid by local agencies or farmers, farmers' markets, roadside stands, and/or CSA program are also deemed to be Program income. The State agency must ensure that the sources and applications of Program income are fully documented.

§ 249.14 Distribution of funds.

(a) *State Plan and agreement.* As a prerequisite to the receipt of Federal funds, a State agency must have its State Plan approved and must execute an agreement with the Department in accordance with § 249.3(c).

(b) *Distribution of SFMNP funds to previously participating State agencies.* Provided that sufficient SFMNP funds are available, each State agency that participated in the SFMNP in any prior fiscal year, shall receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this Part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for grants under the SFMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant must be ratably reduced. However, to the extent permitted by available funds, each State agency shall receive at least $75,000 or the amount that the State agency received for the most recent prior fiscal year in which the State participated, if that amount is less than $75,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any SFMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner:

(1) Of the remaining funds, 75 percent shall be made available to State agencies already participating in the SFMNP that wish to serve additional recipients or increase the current benefit level. If this amount is greater than that necessary to satisfy all State Plans approved for expansion, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) Of the remaining funds, 25 percent shall be made available to State agencies that have not participated in the SFMNP in any prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. The Department reserves the right not to fund every State agency with an approved State Plan.

(e) *Expansion for current State agencies.* In providing funds to State agencies that participated in the SFMNP in the previous fiscal year, the Department must consider on a case-by-case basis, the following factors:

(1) Whether the State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which was beyond the management control of the State, such as severe weather conditions or unanticipated decreases in participant caseload;

(2) Documentation supporting the funds expansion request as outlined in § 249.4(a)(23).

(f) *Funding of new State agencies.* Funds will be awarded to new SFMNP State agencies in accordance with § 249.5.

(g) *Administrative funding.* A State agency will have available for administrative costs an amount not greater than 8 percent of total SFMNP funds.

(h) *Recovery of unused funds.* State agencies must return to FNS any unexpended funds made available for a given fiscal year by February 1 of the following fiscal year.

§ 249.15 Closeout procedures.

(a) *General.* State agencies must submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS and on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be followed in accordance with 7 CFR part 3016.

(1) FNS may disqualify a State agency's participation under the SFMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and Instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may terminate a grant when both parties agree that continuation under the SFMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency may not incur new obligations after the effective date of the disqualification, and must cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers, farmers' markets, roadside stands, and/or CSA programs.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, SFMNP records as specified in § 249.23(a). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any SFMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 249.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 249.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby applicants, recipients, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs adversely affected by certain actions of the State agency may appeal those actions.

(1) *What may be appealed.*

(i) An applicant may appeal denial of certification of SFMNP benefits.

(ii) A recipient may appeal disqualification/suspension of SFMNP benefits.

(iii) A local agency may appeal an action of the State agency disqualifying it from participating in the SFMNP.

(iv) A farmer, farmers' market, roadside stand, and/or CSA program may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the SFMNP.

(2) *What may not be appealed.* Expiration of a contract or agreement shall not be subject to appeal.

(b) *Time limit for request.* The State or local agency must provide individuals, local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs a reasonable period of time to request a fair hearing. Such time limit must not be less than 30 days from the date the agency mails or otherwise issues the notice of adverse action.

(c) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer, farmers' market, roadside stand, and/or CSA program, a postponement is appropriate where the State agency finds that recipients would be unduly inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) Applicants who are denied benefits at initial certification may appeal the denial, but must not receive SFMNP benefits while awaiting the hearing. Recipients who appeal the termination of benefits within the period of time provided under paragraph (b) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to recipients whose certification period has already expired or who become otherwise ineligible for SFMNP benefits. Recipients who become ineligible during a certification, or whose certification period expires, may appeal the termination, but must not receive benefits while awaiting the hearing.

(d) *Procedure.* The State agency hearing procedure shall at a minimum provide the recipient, local agency or farmer, farmers' market, roadside stand, and/or CSA program with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (c) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel or, in the case of a recipient appeal, by a representative designated by the recipient, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing

and the statutory and regulatory provisions governing the SFMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(e) *Continuing responsibilities.* When a farmer, farmers' market, roadside stand, CSA program, and/or local agency appeals an adverse action (and is permitted to continue in the SFMNP while its appeal is pending), it continues to be responsible for compliance with the terms of the written agreement or contract with the State agency.

(f) *Judicial review.* If a State level decision is rendered against the recipient, local agency, farmer, farmers' market, roadside stand, and/or CSA program and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(g) *Additional appeals procedures for State agencies that authorize farmers' markets and not individual farmers.* A State agency that authorizes farmers' markets and not individual farmers shall ensure that procedures are in place to be used when a farmer seeks to appeal an action of a farmers' market or association denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered into by the State agency and the farmers' market and the farmers' market and the farmer.

Subpart F—Monitoring and Review of State Agencies

§ 249.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of SFMNP objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will:

(1) Provide assistance to State agencies in discharging this responsibility;

(2) Establish standards and procedures to determine how well the objectives of this Part are being accomplished; and

(3) Implement sanction procedures as warranted by State SFMNP performance.

(b) *Responsibilities of FNS.* FNS will establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS will review audits to ensure that the SFMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers, farmers' markets, roadside stands, and community supported agriculture programs. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the State agency's compliance with these regulations

(1) FNS may withhold up to 8 percent of the State agency's total SFMNP grant if FNS determines that the State agency has:

(i) Failed, without good cause, to demonstrate efficient and effective administration of its SFMNP; or

(ii) Failed to comply with the requirements contained in this section or the State Plan.

(2) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 249.20(a). Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if, during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers, farmers' markets, roadside stands, and community supported agriculture programs.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold the award of SFMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year. In such an event, FNS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the SFMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FNS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency must establish evaluation and review procedures and document the results of such procedures. The procedures must include, but are not limited to:

(i) Conducting annual monitoring reviews of participating farmers' markets, roadside stands, and community supported agriculture programs. This includes on-site reviews of a minimum of 10 percent of farmers and 10 percent of each type of authorized outlet (farmers' markets, roadside stands, and community supported agriculture programs), and includes those farmers and authorized outlets identified as being at the highest risk. The first year of operation in the SFMNP shall be considered a high-risk indicator. More frequent reviews may be performed, as the State agency deems necessary. In States where both the SFMNP and the WIC Farmers' Market Nutrition Program are in operation, these reviews may be coordinated to avoid duplication. A review by one

program may be counted by the other program toward the monitoring requirement, provided that appropriate sanction action is taken for all violations found.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon and/or CSA program management systems. When the State agency conducts a local agency review outside of the SFMNP season, a review of documents and procedural plans of the SFMNP, rather than actual SFMNP activities, is acceptable.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency must provide special reports on SFMNP activities, and take positive action to correct deficiencies in SFMNP operations.

§ 249.18 Audits.

(a) *Federal access to information.* The Secretary of the U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency must include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS will determine whether SFMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies must conduct independent audits in accordance with 7 CFR parts 3015, 3016 (§ 3016.26), or 3051, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

§ 249.19 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with this Part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this Part.

(b) *Confidentiality.* No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this Part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this Part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 249.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any SFMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from SFMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency must pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons and/or eligible foods so misused or diverted.

(2) If FNS determines that any part of the SFMNP funds received, coupons printed, and/or eligible foods otherwise lost by a State agency were lost as a result of theft, embezzlement, or unexplained causes, the State agency must, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the SFMNP funds or coupons/eligible foods so lost.

(3) The State agency will have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled SFMNP coupons, and/or for failure to comply with the terms of duly executed CSA program contracts or agreements. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the SFMNP coupons issued, or of the eligible foods contracted for delivery by the CSA program, have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the SFMNP, the State agency shall provide the funds necessary to maintain SFMNP operations at the grant level authorized by FNS.

(c) *Penalties.* Penalties will be assessed on whoever embezzles, willfully misapplies, steals or obtains by fraud funds, assets or property (whether received directly or indirectly) provided under Section 4402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The same penalties apply to whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing that such funds, assets or property were obtained illegally. For funds, assets or property valued at $100 or more, a fine of not more than $25,000 or imprisonment of not more than five years (or both) shall apply. For funds, assets or property valued at less than $100, a fine not more than $1,000 or imprisonment for not more than one year (or both) shall apply.

§ 249.21 Procurement and property management.

(a) *Requirements.* State agencies must comply with the requirements of 7 CFR part 3016 for procurement of supplies, equipment and other services with SFMNP funds. These requirements are adopted for use by FNS to ensure that such materials and services are obtained for the SFMNP in an effective manner

and in compliance with the provisions of applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the SFMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations provided that:

(1) Such regulations reflect applicable State and local regulations; and

(2) Any procurements made with SFMNP funds adhere to the standards set forth in 7 CFR part 3016.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment acquired in whole or in part with SFMNP funds.

§ 249.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency must ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (7 CFR part 3017) and drug-free workplace (7 CFR part 3021), as well as the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

§ 249.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency must maintain full and complete records concerning SFMNP operations. Such records must comply with 7 CFR part 3016 and the following requirements:

(1) Records must include, but not be limited to, information pertaining to certification, financial operations, SFMNP coupon issuance and redemption, CSA program agreements, invoices, delivery receipts, equipment purchases and inventory, nutrition education, and civil rights procedures.

(2) All records must be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FNS deems any of the SFMNP records to be of historical interest, it may require the State agency to forward such records to FNS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with SFMNP funds must be retained for three years after its final disposition.

(4) All records must be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and recipient reports.* State agencies must submit financial and SFMNP performance data on a yearly basis as specified by FNS. Such information must include, but shall not be limited to:

(1) Number and type of recipients served with Federal SFMNP funds;

(2) Value of coupons issued and/or eligible foods ordered under CSA programs;

(3) Value of coupons redeemed and/or eligible foods provided to recipients under CSA programs; and

(4) Number of authorized outlets by type; *i.e.*, farmers, farmers' markets, roadside stands, and CSA programs.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and SFMNP performance reports must be traceable to source documentation.

(d) *Certification of reports.* Financial and SFMNP reports must be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, SFMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve these objectives.

§ 249.24 Confidentiality.

The State agency must restrict the use or disclosure of information obtained from SFMNP applicants and recipients to:

(a) Persons directly connected with the administration or enforcement of the SFMNP, including persons investigating or prosecuting violations in the SFMNP under Federal, State or local authority;

(b) Representatives of public organizations designated by the chief State agency officer (or, in the case of Indian Tribal governments acting as SFMNP State agencies, the governing authority) that administer food, nutrition, or other assistance programs that serve persons categorically eligible for the SFMNP. The State agency must execute a written agreement with each such designated organization:

(1) Specifying that the receiving organization may employ SFMNP information only for the purpose of establishing the eligibility of SFMNP applicants and recipients for food, nutrition, or other assistance programs that it administers and conducts outreach to SFMNP applicants and recipients for such programs; and

(2) Containing the receiving organization's assurance that it will not, in turn, disclose the information to a third party.

(c) The Comptroller General of the United States for audit and examination authorized by law.

§ 249.25 Other provisions.

(a) *No aid reduction.* Any programs for which a grant is received under this part shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 as amended (7 U.S.C. 2011, *et seq.*) and to any other Federal or State food or nutrition assistance program.

(b) *Statistical information.* FNS reserves the right to use information obtained under the SFMNP in a summary, statistical or other form that does not identify particular individuals.

§ 249.26 SFMNP information.

(a) Any person who wishes information, assistance, records or other public material must request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1066.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate

Boulevard, Robbinsville, New Jersey, 08691–1598.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th floor, Chicago, Illinois 60604–3507.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 555, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, Room 400, San Francisco, California 94108.

(b) Inquiries pertaining to the SFMNP administered by a federally recognized Indian tribal organization (ITO) should be addressed to the FNS Regional Office responsible for the geographic State in which that ITO is located.

§ 249.27 OMB control number.

The information collection requirements for part 249 are under review by the Office of Management and Budget. The OMB approval number will be included in this section upon publication of the final rule.

Dated: May 17, 2005.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

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Implementation of the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1: Reconsideration; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OAR 2003–0079, FRL–7918–6]

RIN 2060–AJ99

Implementation of the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on two issues raised in a petition for reconsideration of EPA's rule to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). In addition, EPA is taking final action to clarify two aspects of that implementation rule. On April 30, 2004, EPA issued a final rule addressing key elements of the program to implement the 8-hour ozone NAAQS (Phase 1 Rule). Subsequently, on June 29, 2004, and September 24, 2004, three different parties each filed a petition for reconsideration of certain specified aspects of the final rule. By letter dated September 23, 2004, EPA granted reconsideration of three issues raised in the petition for reconsideration filed by Earthjustice on behalf of several environmental organizations. On February 3, 2005, we proposed action on two of the issues and today we are taking final action on these two issues: The applicability of the section 185 fee provisions once the 1-hour NAAQS is revoked, and the timing for determining what is an "applicable requirement" for purposes of anti-backsliding once the 1-hour NAAQS is revoked. On April 4, 2005, we issued a separate proposed rule on new source review (NSR) anti-backsliding, the third issue on which we granted reconsideration, and we plan to issue a final rule by June 30, 2005.

In the February 3, 2005 proposal, we also proposed to revise the Phase 1 Rule in two respects. Today, we are taking final action on these two issues. First, we have determined that contingency measures for failure to make reasonable further progress (RFP) or attain by the applicable attainment date for the 1-hour ozone standard are no longer required as part of the State implementation plan (SIP) for as part of the SIP for an area after revocation of that standard. Second, we are adding the requirement to submit attainment demonstrations to the definition of "applicable requirements" in § 51.900.

DATES: This final action will be effective on June 27, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0079. 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 materials, 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 (Air Docket), Attention E-Docket No. OAR–2003–0079, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, 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 fax number is (202) 566–1749.

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SUPPLEMENTARY INFORMATION:

I. General Information

This action does not directly regulate emissions sources. Instead it addresses how States should continue to plan to meet the ozone standard as we transition from the 1-hour to the 8-hour ozone NAAQS.

Outline

II. Background

On June 2, 2003 (68 FR 32802) we proposed a rule to govern the transition from the 1-hour to the 8-hour NAAQS and implementation of the 8-hour ozone NAAQS. On April 30, 2004 (69 FR 23951), we issued a final rule (Phase 1 Rule), which covered some, but not all, of the program elements in the proposed rule. The Phase 1 Rule covered the following key implementation issues: Classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS (*i.e.*, when the 1-hour NAAQS will no longer apply); how anti-backsliding principles will ensure continued progress in achieving ozone reductions as areas transition to implementation of the 8-hour ozone NAAQS; attainment dates for the 8-hour ozone NAAQS; and the timing of emissions reductions needed for attainment of the 8-hour ozone NAAQS. The EPA plans to issue a final rule this summer addressing the remaining issues from the June 2003 proposal (Phase 2 Rule).

Following publication of the Phase 1 Rule, the Administrator received three petitions, pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) requesting reconsideration of a number of aspects of the final rule.[1] On September 23, 2004, we granted reconsideration of three issues raised in the Earthjustice Petition. On February 3,

[1] The petitions for reconsideration of the Phase 1 Rule were filed by: (1) Earthjustice on behalf of the American Lung Association, Environmental Defense, Natural Resources Defense Council, Sierra Club, Clean Air Task Force, Conservation Law Foundation, and Southern Alliance for Clean Energy; (2) the National Petrochemical and Refiners Association and the National Association of Manufacturers; and (3) the American Petroleum Institute, American Chemistry Council, American Iron and Steel Institute, National Association of Manufacturers and the U.S. Chamber of Commerce.

2005 (70 FR 5593), we issued a proposed rule seeking comment on two of the three issues raised in the Petition and proposed two other revisions to the Phase 1 Rule. The purpose of today's action is to take final action on the four issues which were addressed in the February 3, 2005 proposal. First, we are determining that section 185 fees are no longer required in SIPs for a failure to attain the 1-hour NAAQS once the 1-hour NAAQS is revoked. Second, we are determining that the timing for the determination of what is an "applicable requirement" once the 1-hour NAAQS is revoked is June 15, 2004. Third, we are finding that contingency measures are no longer required in SIPs for a failure to make RFP toward the 1-hour standard or attain that standard by the applicable attainment date for the 1-hour standard. Fourth, we are adding the requirement to submit an "attainment demonstration" to the list of applicable requirements. On April 4, 2005 (63 FR 17018), we proposed action on a third issue on which we granted reconsideration concerning the continued applicability of the 1-hour NSR program. We intend to take final action on that issue no later than June 30, 2005.

On January 10, 2005, we granted reconsideration of one other issue raised by Earthjustice in their Petition—the overwhelming transport classification for certain areas subject only to subpart 1 of Part D of the CAA. We plan to issue a proposal on this issue this summer. At the same time, we denied reconsideration of the remaining two issues they raised in their Petition concerning the applicability of reformulated gasoline when the 1-hour NAAQS is revoked and whether EPA had removed authority for future redesignations to nonattainment for the 8-hour ozone NAAQS.

We are continuing to review the issues raised in the National Petrochemical and Refiners Association, *et al.*, and American Petroleum Institute, *et al.*, Petitions. Copies of the Petitions for Reconsideration and actions EPA has taken regarding the Petitions may be found at: *www.epa.gov/ttn/naaqs/ozone/o3imp8hr* and in Air Docket, ID No. OAR–2003–0079. For more detailed background information, the reader should refer to the Phase 1 Rule (April 30, 2004; 69 FR 23956) and the reconsideration proposal (February 3, 2005; 70 FR 5593).

III. Today's Action

A. Reconsideration of the Portion of the Phase 1 Rule Addressing the Continued Applicability of the Section 185 Fee Provision for Areas That Fail To Attain the 1-Hour NAAQS

1. *Background.* In the Phase 1 Rule we stated that upon revocation of the 1-hour NAAQS: (1) EPA will no longer make findings of failure to attain the 1-hour NAAQS; (2) EPA will no longer reclassify areas to a higher classification for the 1-hour NAAQS based on a finding of failure to attain; and (3) States are no longer obligated to impose fees under sections 181(b)(4) and 185 of the CAA ("Fee Provisions") in severe or extreme ozone nonattainment areas that fail to attain the 1-hour standard by the area's 1-hour attainment date (69 FR 23984). In the reconsideration proposal (70 FR 5596), we stated that we continued to believe that there is no basis for determining whether an area has met the 1-hour NAAQS once the 1-hour NAAQS has been revoked. Consequently, we stated that since there will no longer be an applicable classification or attainment date, there cannot be a failure to meet such a date, *i.e.*, the Fee Provisions could not be triggered for 1-hour nonattainment areas.

2. *Summary of Final Rule.* For the reasons stated in the proposal and in the response to comments, we are adopting the approach we included in the proposal which is that once the 1-hour standard is revoked for an area, the fee provisions in SIPs will not be triggered for a failure of an area to attain the 1-hour NAAQS by its 1-hour attainment date and States will not be required to adopt fee provisions for the 1-hour standard.

3. *Comments and Responses.*
Comment: Several commenters questioned EPA's authority to waive the section 185 fee requirements. Some commenters claimed that such action is contrary to the anti-backsliding provisions of section 172(e) of the CAA which provides that if EPA relaxes a NAAQS, it must provide for controls which are not less stringent than the controls required before such relaxation. One commenter noted that EPA interprets this provision to apply with equal force when a NAAQS is strengthened. Several commenters stated that the proposed waiver is also inconsistent with other rationales offered by EPA for anti-backsliding, *i.e.*, that ozone nonattainment areas are designated and classified by operation of law; that allowing relaxation of controls mandated by subpart 2 would render those controls "prematurely obsolete" in contravention of the Supreme Court's decision regarding the implementation of the 8-hour NAAQS; and that section 175A(d) of the CAA provides that areas redesignated to attainment can, at most, move mandated measures to be contingency measures, and that this rationale precludes relaxation of the fee provisions after revocation. Another commenter stated that the CAA does not explicitly delegate to EPA the authority to remove provisions enacted by Congress nor does it impliedly authorize it to remove them; consequently the section 185 fee provisions should remain in effect. The commenter stated that EPA's proposal would render "textually explicit" provisions of part D "utterly inoperative," which was prohibited under *American Trucking*. Another commenter contended the language of the CAA is explicit and does not give EPA discretion to choose to enforce or not enforce a program and EPA thus has no authority to promulgate a rule stating that section 185 is not applicable.

Response: As an initial matter, section 172(e) addresses the situation where EPA has promulgated a less stringent NAAQS and does not directly apply here, where EPA has promulgated a more stringent NAAQS. However, since the statute is silent about what requirements must remain when EPA promulgates a more stringent NAAQS, EPA looked to section 172(e) (as well as other provisions of the CAA) to discern what Congress might have intended in this situation. After reviewing section 172(e) and other provisions of the statute, EPA concluded that Congress would have intended that control obligations that applied for purposes of the 1-hour NAAQS should remain in place. As EPA explains in response to a similar comment regarding the date for determining "applicable requirements," the commenters misconstrue what section 172(e) requires. Section 172(e) requires EPA to provide for controls not less stringent than those that applied "before such relaxation [of the NAAQS]." Thus, it does not mandate that controls be as stringent as those that could not be required to be imposed until a date after the previous NAAQS no longer exists.

Similarly, our anti-backsliding rule establishes a "cut-off" date for determining which control obligations will continue to apply. We looked at three options for when this "cut-off" date should be—the date of signature of designation rule, *i.e.*, April 15, 2004; the effective date of 8-hour designations, *i.e.*, for most areas June 15, 2004; and the date the 1-hour standard is revoked, *i.e.*, for most areas June 15, 2005. In this

final rule, we adopt the effective date of designation for the 8-hour standard as the relevant cut-off date. The requirement to impose section 185 fees cannot exist any earlier than 2006 because the earliest 1-hour attainment date for a severe or extreme ozone nonattainment is November 15, 2005. Thus, we do not believe that even applying 172(e) directly (which is not the case here) would result in the fee obligation remaining in place after revision of the NAAQS because the requirement to implement the fees does not exist as of the effective date of designation for the 8-hour NAAQS. Additionally, upon revocation of the 1-hour NAAQS, a State may remove from their SIP the provisions for complying with the section 185 fee provision as it applies to the 1-hour NAAQS.

We disagree that this approach is inconsistent with other provisions in the statute that we looked to for purposes of establishing our anti-backsliding approach. We recognized that Congress did not directly speak to the issue of what occurs if a more stringent NAAQS is promulgated, but looked to a variety of statutory provisions to discern Congressional intent. While we did look at the fact that Congress designated and classified areas as a matter of law in 1990, we have not taken the position that such action "codified" the 1-hour standard and left it in place indefinitely. Rather, we believe that under this provision Congress intended the areas classified in 1990 to implement the required controls until such areas attained the ozone standard necessary to protect public health. The 8-hour standard has replaced the 1-hour standard as the ozone standard necessary to protect public health. We believe that Congress intended these areas to continue to implement mandated control measures but not that they provide for programs keyed to a finding of failure to attain the old standard after that standard no longer applies.

As to the U.S. Supreme Court decision, we first note that in making the quoted statement, the Supreme Court was addressing EPA's determination that no areas would be classified under subpart 2 for purposes of the 8-hour NAAQS and thus that the subpart 2 control requirements would not apply at all for purposes of implementing the 8-hour NAAQS. While the classification scheme we established in our Phase 1 rule for the 8-hour NAAQS is the primary method for addressing the concern that no areas would be subject to subpart 2 for purposes of implementing the 8-hour NAAQS, we agree that the statement carries some weight for purposes of anti-backsliding, particularly where the classification scheme for the 8-hour standard results in many areas being placed in lower classifications than their classifications for purposes of the 1-hour standard. As we stated in the preamble to the Phase 1 Rule, we believe that Congress intended areas with significant pollution problems to retain Congressionally-mandated pollution programs until such time as they attain the ozone NAAQS necessary to protect public health, which is now the 8-hour standard.

Our Phase 1 Rule does not render the subpart 2 provisions "prematurely obsolete" or "utterly inoperative." Rather, they continue to have meaning in two ways. First, the applicable subpart 2 control requirements that were required to be imposed for purposes of the 1-hour standard at the time an area was designated nonattainment for the 8-hour standard continue to apply until the area attains the 8-hour NAAQS. Second, many areas will be classified under subpart 2 for purposes of the 8-hour standard and will be subject to the subpart 2 requirements for purposes of implementing the 8-hour standard. We do not read the Supreme Court decision (or any of the provisions of the CAA that we examined) to mean that Congress intended areas designated nonattainment for the 1-hour standard to remain fully subject to that pre-existing NAAQS, including future requirements whose implementation is dependent on a future determination that the area had not met a revoked standard, even after they begin programs to comply with the revised NAAQS, which is the NAAQS now determined to be necessary to protect public health. Similarly, we don't think that section 175A(d) indicates any Congressional intent to retain the section 185 fee obligation for a failure to attain the 1-hour NAAQS after that standard has been revoked. Because this provision is linked to whether an area attains by its severe or extreme area attainment date, it would have no meaning for an area redesignated to attainment and thus would not need to be retained as a contingency measure for purposes of a 1-hour ozone maintenance plan under section 175A(d). Because this obligation would not need to be retained as part of a section 175A(d) maintenance plan, we don't believe this provision indicates Congressional intent that the fee obligation be retained once the 1-hour standard is revoked.

Comment: One commenter questioned EPA's statement that because section 185 fees "operate in lieu of reclassification" they should no longer apply since reclassifications will no longer be required. The commenter contended this statement is incorrect because the CAA does not require SIPs to contain provisions for imposition of the section 185 fees in lieu of reclassification for severe and extreme ozone nonattainment areas.

Response: While we disagree with the commenter regarding whether the fees are imposed "in lieu" of reclassification, we need not resolve that issue here. For the same reasons we concluded that areas are not subject to reclassification for the 1-hour standard once it is revoked, we believe that areas should no longer be subject to the section 185 fees provision for failure to meet that standard once it is revoked. Like reclassification, the section 185 fees are triggered by a failure to attain the standard. Once the 1-hour standard no longer applies (*i.e.*, is no longer the health-based NAAQS), areas are not obligated to meet it and neither the States nor EPA are obligated to conclude whether the area has met it by the attainment date that also no longer applies. Therefore, findings of nonattainment of the 1-hour standard will no longer be made and the 185 fee program would no longer be required.

Comment: One commenter disagreed with EPA's assertion that the fee provisions are linked to whether or not an area has met the 1-hour NAAQS which EPA has determined is no longer needed to protect public health. The commenter stated that regardless of whether the 1-hour NAAQS is still needed to protect public health, the CAA requires that controls required for the 1-hour NAAQS must not be relaxed.

Response: As discussed above, we do not believe the timing provision of section 172(e) would mandate retention of the section 185 fee obligation where EPA has promulgated a less stringent NAAQS.

Comment: Several commenters disagreed with EPA's assertion that section 185 fees are no longer needed because States should focus their resources on the 8-hour NAAQS and it would be counterproductive to continue efforts linked to the 1-hour NAAQS.

Response: We believe that imposition of the section 185 fees would be counterproductive because instead of focusing limited resources on attainment of the 8-hour NAAQS as expeditiously as practicable, States would need to divert some of those resources to monitoring compliance with a standard that is no longer needed to protect public health. If fees were to be triggered, States would have to devote resources to the further

development of plans focused on meeting the 1-hour standard based on a determination that an area had failed to achieve a non-existent NAAQS. We believe this is an unwise use of resources when the 1-hour standard no longer applies.

A determination of failure to attain in the future, accompanied by additional planning obligations focused on attaining a standard that no longer applies, would detract from efforts to plan for and implement the new health-based standard. Once controls are adopted for the 8-hour NAAQS, additional 1-hour planning would be redundant, at a minimum, and could result in efforts beyond those necessary to meet the applicable health-based standard.

Comment: Several commenters disagreed with EPA's assertion that the CAA requires a finding of failure to attain before the fee provisions are triggered. The commenters stated that the fees are based on whether an area has attained, which can be determined by comparing monitored air quality data with the standard for the relevant time period. One commenter noted that for areas that will be submitting an outstanding 1-hour attainment demonstration, EPA can and must determine whether the demonstration shows attainment with the 1-hour NAAQS.

Response: Whether or not the fees provision is triggered by a finding of failure to attain or simply through an examination of monitoring data, is not a decisive factor for determining whether the fee obligation should be retained under the anti-backsliding provisions. As provided above, we do not believe there is any Congressional intent that this obligation remain in place.

While we retained the obligation to submit outstanding 1-hour attainment demonstrations, we did so primarily for the purpose of ensuring that as areas began the transition to implementation of the 8-hour NAAQS, the areas achieved the emissions reductions that Congress contemplated they would make on a specific near-term schedule. A determination that a specific mix of control measures demonstrates attainment at a future date is not the same as a reviewing monitoring data after the attainment date to determine whether an area in fact attained. The purpose of retaining the outstanding 1-hour attainment demonstration obligation is to ensure that in the short-term, prior to submission of 8-hour SIPs, areas continue to make progress in cleaning their air.

Comment: Several commenters urged EPA to retain the section 185 fee provisions to provide incentives for businesses in the worst nonattainment areas to reduce emissions in order to attain or make RFP toward the NAAQS. One commenter disagreed with EPA's argument that it would be counterproductive to continue efforts linked to whether or not an area met the 1-hour NAAQS. Further, the commenter stated that the fee provisions provide an economic incentive for major sources to achieve 20 percent reductions in emissions in areas that are violating the NAAQS. Another commenter stated that the section 185 fees should be retained because they create a strong incentive for major sources to reduce emissions and ensure that local areas and States take actions to reduce emissions and improve air quality. The commenter stated the section 185 fees create tremendous benefits at the SIP development stage since major sources can and have become forceful advocates for emissions reductions from other sources based on an economic interest in avoiding this charge to pollute. One commenter disagreed with EPA's assertion that areas should focus their resources on the 8-hour NAAQS rather than the 1-hour NAAQS because they believe that Congress' intent was to impose fees as incentives while still requiring emissions reductions regardless of whether the reductions are to achieve the 8-hour or 1-hour NAAQS. Some commenters noted that the fees would generate additional resources for planning and control efforts and would discourage emissions of ozone precursors. Finally, one commenter stated that the section 185 fees would provide substantial resources to States with difficult air pollution problems.

Response: As stated above, EPA does not believe that Congress directly spoke to which obligations must remain where EPA promulgates a more stringent standard. Furthermore, we do not believe that Congress intended the fee obligation to continue for a failure to meet a standard once that standard has been replaced. Because the section 185 fees that would apply for failure to attain the 1-hour NAAQS are linked to whether an area has attained the 1-hour standard, any efforts to eliminate fees imposed for a failure to attain the 1-hour standard would be focused on attainment of the 1-hour standard not the 8-hour standard, which is the standard necessary to protect public health. Thus, if we retained the fee provisions for purposes of failure to attain the 1-hour standard, States would divert resources from planning for the 8-hour standard to planning efforts for the 1-hour standard based on a future determination that the area had not met a revoked standard.

The incentives for major sources to reduce emissions remain. The section 185 fee provisions remain in place for purposes of the 8-hour standard, and thus sources will have an incentive to reduce emissions to ensure areas meet the 8-hour standard. We note that it is speculative to assume that States would use fees generated under this provision for purposes of planning and control efforts beyond those already funded by the State. In any event, we see no Congressional intent to impose these fees for that purpose. That reason, absent a compelling reason related to attaining the 8-hour NAAQS, is not a sufficient basis to retain the requirement.

Comment: One commenter also stated that EPA did not provide support in the record for its decisions on how to implement the 8-hour standard, rendering its decision arbitrary and capricious. In particular, the commenter claimed EPA provided no support for its decision to eliminate the fee provisions nor showed that it would be counterproductive to retain the fee obligation for severe and extreme 1-hour nonattainment areas that fail to attain the 1-hour standard by their attainment date.

Response: This commenter, as well as others, contend that retention of the fee provisions for failure to attain the 1-hour standard would be beneficial because their existence would spur stationary sources to advocate tighter controls in order to avoid the repercussions of a failure to attain. It is logical to assume that these same fee provisions, if triggered, would spur stationary sources to pressure areas to focus on attainment of the 1-hour standard (to relieve the sources of the fee obligation). Planning activities for attaining a standard take a commitment of time and money. While reductions for purposes of the 8-hour standard may result in benefits for the pre-existing 1-hour standard (and vice versa), other activities, such as modeling for attainment, will not. Time and resources spent modeling and planning for attainment of the 1-hour standard will detract from planning efforts for the 8-hour standard.

B. Reconsideration of the Portion of the Phase 1 Rule Establishing the Time for Determining Which 1-Hour Obligations Remain Applicable Requirements

1. *Background.* The Phase 1 Rule provided that the "applicable requirements" would be those 1-hour

control measures that applied in an area as of the date of signature of the Phase 1 Rule (*i.e.*, April 15, 2004).[2] In the June 2003 proposal (68 FR 32821), EPA had proposed that the applicable requirements would be those that applied as of the effective date of the 8-hour designations (*i.e.*, for almost all areas, June 15, 2004). The draft regulatory text released for public comment in August 2003 defined the applicable requirements as those 1-hour requirements that applied as of the date of revocation of the 1-hour NAAQS (*i.e.*, for almost all areas, June 15, 2005). (*See e.g.*, 51.905(a) of Draft Regulatory Text.) In the reconsideration proposal, we proposed June 15, 2004 as the date for determining which 1-hour control measures continue to apply in an area once the 1-hour standard is revoked, which was consistent with our June 2, 2003 proposal.

2. *Summary of Final Rule.* We are adopting the approach that we proposed, which is that the effective date of the 8-hour designations (*i.e.*, for almost all areas, June 15, 2004) is the date for determining which 1-hour control measures continue to apply in an area once the 1-hour standard is revoked. An area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain "applicable requirements" under the anti-backsliding provisions of the Phase 1 Rule. We believe this date is consistent with the trigger date for other obligations for implementation of the 8-hour ozone NAAQS, such as the attainment date provisions of the Phase 1 Rule and the date for submission of planning SIPs as proposed in the June 2003 proposal.

The final introductory regulatory text for § 51.900(f) has been revised from the proposal to use the defined term "designation for the 8-hour NAAQS" (see § 51.900(h)) to refer to the effective date of designation for an area.

3. *Comments and Responses.*

Comment: One commenter stated that the proposed revocation of the 1-hour NAAQS violates the CAA and will be invalidated on remand. The commenter further stated that the entire "applicable requirements" rubric stands with no legal basis.

Response: We are not reconsidering in this action our revocation of the 1-hour standard or the applicable requirements "rubric." Therefore, we do not respond to comments on these issues.

Comment: One commenter noted that any cutoff date for anti-backsliding protection violates section 172(e) of the CAA that provides that EPA's rules must provide for controls which are not less stringent than the controls applicable to such areas designated nonattainment before relaxing (or strengthening) a NAAQS. The commenter stated that section 172(e) requires that any area designated nonattainment for the 1-hour NAAQS before relaxation (or here, revocation) of that standard must be subject to controls at least as stringent as those that would apply to the area under the 1-hour NAAQS. Thus, the commenter stated that such areas must continue to adopt and implement the level of controls mandated by the CAA for 1-hour nonattainment areas as they would in the absence of revocation. The commenter stated that this means that areas are subject to additional requirements in the case of a bump up to a higher classification, whether the bump up occurred before or after the revocation. The commenter stated that the proposal is also inconsistent with other rationales offered by EPA for anti-backsliding, *i.e.*, that ozone nonattainment areas are designated and classified by operation of law, and that allowing relaxation of controls mandated by subpart 2 would render those controls "prematurely obsolete" in contravention of the Supreme Court's decision in *Whitman* v. *American Trucking Assoc.* 531 U.S. 427 (2001).

Response: Initially, section 172(e) does not apply by its own terms where, as here, EPA has adopted a new, more stringent NAAQS. Congress did not directly address how areas should transition to a more stringent NAAQS. However, as we stated in the preamble to the Phase 1 Rule, we looked to section 172(e) of the CAA, as well as other statutory provisions and the Supreme Court decision in *Whitman* v. *American Trucking Assoc.*, 531 U.S. 427 (2001) to determine how we thought Congress intended such a transition should occur. We concluded that, where we have adopted a more stringent NAAQS, Congress would not have intended areas to be able to loosen applicable control requirements as they transition to implementation of that more stringent NAAQS. This conclusion was the basis for our anti-backsliding approach.

We note that contrary to the statements of the commenter, section 172(e) does provide a cut-off date. It provides that control requirements should not be less stringent than the controls that applied "before such relaxation." This timing provision places a limit on which controls should be considered. This phrase could possibly be interpreted in several ways—*e.g.*, the time the relaxed standard is promulgated, the time areas must begin to implement the revised standard, or the time the more stringent standard no longer applies. However, we do not believe that it means that all requirements that could ever be triggered for such a standard remain permanently in place. That position is tantamount to saying that by this provision Congress intended to retain the standard itself. We do not be believe that Congress would have done so in such an oblique manner. In this case, we took comment in the June 2, 2003 proposal and the draft regulatory text that we made available on August 6, 2003 on several options for what the timing for determining applicable requirements should be. We have concluded that the control obligations that should remain in place are those that applied as of the effective date of the 8-hour designation for an area. Furthermore, for the same reasons we stated in response to comments on the section 185 fee issues, we do not believe our interpretation is inconsistent with our analysis of the other statutory provisions that we looked to for guidance on what Congress may have intended.

Comment: A few commenters stated that the date for determining "applicable requirements" should be June 15, 2005. One commenter stated that June 15, 2005 would contain the most recent control measures and reduce the extent of backsliding that will occur due to revocation of the 1-hour standard. The commenter further stated that the measures that should apply for purposes of anti-backsliding should include all measures that were submitted to EPA for review as of June 15, 2005. Another commenter who voiced support for June 15, 2005 as the most appropriate date for determining applicable requirements noted that choosing an earlier date would provide a "benefit" to those communities that have gamed the SIP process to the detriment of those communities who took their responsibilities earnestly. Further, the commenter stated that the earlier date provides a potential future incentive for States to delay the SIP process as long as possible with hopes for future loopholes that would make such actions unnecessary.

[2] The Phase 1 Rule provides in § 51.900(f) that: "Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment or unclassifiable * * *" (69 FR 23997). Phase 1 of the final rule to implement the 8-hour ozone NAAQS was signed by the Administrator on April 15, 2004.

Response: We disagree with the commenter that adopting June 15, 2005 as the date for determining "applicable requirements" would ensure that the most recent control measures would apply. In fact, we believe that there will be no substantive difference between the selection of June 15, 2004 and June 15, 2005 because no areas have been reclassified in that 1-year period. Under our anti-backsliding rule, States remain obligated to adopt and implement any control obligations that applied for the area's 1-hour classification as of the effective date of designations for the 8-hour NAAQS. Thus, each area's control requirements are dependent on the area's 1-hour classification as of the date for determining the area's applicable requirements. Areas must retain control obligations applicable on that date whether or not the area had satisfied the obligation by that date. It appears that the commenter misinterprets the Phase 1 Rule to allow areas that have not yet adopted control obligations to be relieved of the obligation to adopt such controls, which is not the case (69 FR 23972).

We note that an area's applicable requirements are also related to the area's 1-hour designation as of the date for determining applicable requirements. And, while EPA has proposed to redesignate several areas (Atlanta, Cincinnati, Phoenix) from nonattainment to attainment for purposes of the 1-hour standard, there is only one substantive difference between the "applicable requirements" that would apply to an area designated nonattainment for the 1-hour standard and 1-hour attainment areas subject to a section 175A maintenance plan. That difference is that a maintenance area that has moved an "applicable requirement" to its contingency plan prior to the date for determining the "applicable requirements" may leave that obligation in its contingency plan and need not begin to implement the program if the program is not required based on the area's 8-hour classification.[3] For such an area, the selection of June 15, 2005 would provide additional time for areas to move measures that are currently being implemented to the area's contingency plan. Thus, if any argument could be made, it would be that the selection of June 15, 2005 would provide 1-hour ozone nonattainment areas that achieve the 1-hour standard more time to be eligible for redesignation to attainment. This could result in less stringent controls being implemented because areas redesignated to attainment are able to stop implementation of one or more control measures and move those measures to the contingency plan.

Comment: A number of commenters disagreed with making June 15, 2004, rather than April 15, 2004, the date for determining which "applicable requirements" apply to an area. One commenter stated that April 15, 2004 represents the point in time when States were on notice that they needed to shift their efforts and adopt measures to attain the 8-hour not the 1-hour NAAQS. The commenter further stated that the responsibility and timelines for implementing 8-hour nonattainment measures were triggered for purposes of the new standard on April 15, 2004, in accordance with settlement agreements with environmental groups in the American Lung Association litigation over the issue (*American Lung Association* v. *EPA* (D.D.C. No. 1:02CV02239).

Response: States have been aware since July 1997, when the 8-hour NAAQS was promulgated, that they needed to begin to consider programs to meet that standard. While April 15, 2004 is the date that the final Phase 1 and designation rules were signed, we do not believe that the date of signature is more meaningful than the effective date of the rulemaking action. For the reasons provided in the reconsideration proposal, we believe that the effective date of designation is more consistent with other obligations under the Phase 1 Rule and is, therefore, more consistent and appropriate. We note that the settlement referenced by the commenter only established an obligation for EPA to sign no later than April 15, 2004, a final rule designating areas for the 8-hour standard. That settlement did not address the timelines and responsibilities for implementing the 8-hour ozone NAAQS.

Comment: One commenter stated that although the date change from April 15, 2004 to June 15, 2004 represents only a couple of months, the implications are significant for two areas that were placed in a more stringent classification during that time frame. The commenter stated that subpart 2's planning and implementation burdens fall disproportionately on stationary sources whether or not stationary sources are the primary contributor to nonattainment, without moving either of the two areas impacted by the date change (*i.e.*, Beaumont/Port Arthur and the San Joaquin Valley) any closer to attaining either the 1-hour or 8-hour NAAQS. The commenter further stated that Beaumont/Port Arthur's nonattainment issues stem from ozone transport from the Houston/Galveston nonattainment area, and that mobile sources comprise as much as 60 percent of the emissions inventory in the San Joaquin Valley.

Response: We agree that shifting the date from April 15, 2004 to June 15, 2004 has implications for both the Beaumont/Port Arthur and the San Joaquin Valley nonattainment areas which were classified between those two dates. For the Beaumont/Port Arthur area, the reclassification has resulted in a number of new requirements. Only the new reasonably available control technology (RACT) requirements, which must now apply to smaller sources with a potential to emit 50 tons/year or more down from 100 tons/year, directly impact industrial sources. Other new requirements, such as the clean fuel fleets requirement, instead impact emissions from mobile sources. Thus, we do not believe the requirements that were triggered by reclassification disproportionately apply to stationary sources.

We note, however, that approximately 59 percent of the Beaumont/Port Arthur area's NO_X emissions and 55 percent of the area's VOC emissions come from local stationary sources.[4] Consequently, any attainment plan for the Beaumont/Port Arthur area would have to include stationary source controls.

While we agree that the Beaumont/Port Arthur area is sometimes affected by emissions transported from Houston, at other times the Beaumont/Port Arthur area ozone problem is primarily the result of locally-generated emissions. In Texas' latest proposed revision to the SIP for the Beaumont/Port Arthur area, Texas estimated that more than half of the 1-hour exceedence days were influenced significantly by local emissions.[5] This is not surprising since Beaumont/Port Arthur is home to a large number of petrochemical manufacturers. Thus, we do not agree that the additional local control obligations that would apply based on a serious vs. moderate classification would not result in reductions that will improve air quality in the Beaumont/Port Arthur area.

In the San Joaquin Valley, shifting the date means that "applicable requirements" for the San Joaquin Valley ozone nonattainment area are the "extreme" 1-hour ozone nonattainment requirements as opposed to the

[3] See memorandum dated May 12, 2004, entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs" from Tom Helms and Leila H. Cook.

[4] Texas SIP revision that was submitted on November 16, 2004, see pages 2–5.

[5] Texas SIP revision that was submitted on November 16, 2004, see pages 4–5.

requirements that applied based on a "severe" 1-hour classification. Although EPA generally agrees with the comment that mobile sources contribute approximately 60 percent towards the ozone problem in the Valley,[6] we do not agree that requiring San Joaquin to adopt and implement the 1-hour extreme control requirements places a new disproportionate burden on stationary sources located in the Valley. While the contribution of emissions from stationary sources to the overall emissions in the San Joaquin Valley is less than that for mobile sources,[7] stationary sources remain a critical part of the overall air pollution control strategy needed by the State and the San Joaquin Valley Unified Air Pollution Control District to achieve attainment.

Section 182(e)(4) of the CAA allows SIPs for areas classified extreme to adopt traffic controls during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provisions of the CAA. Furthermore, on-road mobile source emission standards continue to improve through EPA and State regulations, and will result in emissions reductions over time as newer vehicles replace older vehicles. Additionally, new fuel and emission standard requirements for nonroad diesel engines were finalized by EPA last year and will achieve substantial reductions through time from the non-road diesel engine sector. Reducing VOC emissions from the large number of area sources is also an important part of the overall ozone control strategy for the San Joaquin Valley.[8]

Comment: One commenter stated that EPA should apply anti-backsliding measures only where they will assist an area in attaining or maintaining the 8-hour NAAQS.

Response: The EPA established its general anti-backsliding approach in the Phase 1 Rule and is not reconsidering here and therefore not responding to comments on the general issues raised by the commenter.

Comment: One commenter stated that since San Joaquin's attainment date under the 8-hour NAAQS is now 2013, there is no longer any reason to require imposition of the control measures required for the extreme classification contained in the approved bump up SIP for the 1-hour NAAQS by 2010. The commenter stated that retaining these requirements will unnecessarily restrict business operations in the area without providing commensurate environmental benefit. Several commenters asserted that retaining the April 15, 2004 date would be consistent with the unique circumstances in the San Joaquin Valley. They claimed that San Joaquin's 2005 emissions inventories for NO_X and reactive organic gases are mainly comprised of mobile source emissions and that these emissions were a key reason the area was unable to demonstrate attainment of the 1-hour ozone NAAQS by the 2005 deadline. The commenters believe that continued implementation of the 1-hour severe area requirements in addition to various mobile source emission control measures which San Joaquin has adopted will satisfy EPA's objective that they make expeditious progress toward attainment of the 8-hour NAAQS.

Response: At the State's request, EPA recently reclassified the San Joaquin area to extreme. The EPA disagrees with the commenter that because San Joaquin now has a later attainment date (2013 for the 8-hour standard compared with a 1-hour extreme area attainment date of 2010), there is no longer a need to require the extreme area requirements. We do not view the longer attainment period for the 8-hour standard as a basis for delaying emission reductions that were required for purposes of the 1-hour standard. The State's request for a voluntary bump up to extreme was based on the area's inability to demonstrate attainment of the 1-hour standard by 2007. Ozone is a persistent problem in the San Joaquin Valley where, over the past 30 years, monitors in the San Joaquin Valley have measured exceedences of the 8-hour standard level between approximately 90 and 140 days per year.[9] This serious and persistent ozone problem in the area supports continuing to require the area to implement the more stringent obligations that apply under the area's extreme classification for the 1-hour standard. In another response to comment, we provide more detail regarding the extreme areas requirements and the "circumstances" of the San Joaquin area, specifically responding to the commenters' allegations relating to mobile source emissions. As stated in our proposed reconsideration notice, EPA believes that implementing the additional 1-hour requirements of the higher (extreme) classification serves to ensure continued progress toward reducing ambient ozone levels and meeting the 8-hour ozone standard.

Comment: One commenter disagreed with EPA's statement that June 15, 2004 is more consistent with the other aspects of the Phase 1 Rule that are keyed to the effective date of the designations rule rather than the signature date. The commenter stated that nothing about EPA's use of the phrase "time of designation" suggests that it was intended to mean the effective date of designations. The commenter agreed with EPA's statement that it is important for areas to know "early in the process" which 1-hour requirements will remain in place for implementation of the 8-hour NAAQS, and claimed that changing the cutoff date now will impede the San Joaquin Valley Air Pollution Control District's progress toward developing an attainment plan. Another commenter stated that EPA's use of the date of signing of designations is consistent with dates used elsewhere in the Phase 1 Rule and should be retained.

Response: The phrase "designation for the 8-hour NAAQS" is defined in § 51.900(h) of the Phase 1 Rule to mean "the effective date of the 8-hour designation for an area." We are aware of only one purpose for which the date of signature of the designation rule is used in the Phase 1 Rule. Section 51.902 indicates that an area's 1-hour design value as of the date of signature of the designation rule will govern whether the area is subject to the classification provisions of subpart 2 of part D of title I of the CAA, or whether it is subject only to the obligations under subpart 1. Since an area's classification occurs "by operation of law" at the time of designation and because such classification is included in the tables promulgated in the designation rule, we could not use a date later than the date of signature of the designation rule as the date for determining whether an area would be classified under subpart 2. The "effective date of designation" is used (*i.e.*, the phrase "designation for the 8-hour standard") for purposes of determining an area's attainment date. In addition, our proposed rule concerning planning obligations for the 8-hour standard (the regulatory text which was released for comment at the same as the regulatory text for the Phase 1 Rule), linked SIP submission obligations to the effective date of designation for the 8-hour NAAQS.

[6] Calculated from typical summertime day mobile source NO_X and VOC emissions inventory for 2000 as a percent of the total 2000 NO_X and VOC emissions. Extreme Ozone Attainment Demonstration Plan, San Joaquin Valley Air Basin (October 2004), Section 3. Available at *http://www.valleyair.org/*.

[7] Id. at p. 3–11, Table 3–1.

[8] Id. at p. 3–9, Table 3–1.

[9] See California Air Resources Board's 8–Hour Ozone Trends Summary for the San Joaquin Valley Air Basin at: *http://www.arb.ca.gov/adam/cgi-bin/db2www/polltrendsb.d2w/Branch.*

C. Contingency Measures in SIPs for the 1-Hour Ozone Standard

1. *Background.* Sections 172(c)(9) and 182(c)(9) of the CAA require that nonattainment area SIPs contain contingency measures that would be implemented if an area fails to attain the NAAQS or fails to make RFP toward attainment. In the reconsideration proposal, EPA recognized that it had not addressed the continued application of 1-hour section 172(c)(9) contingency measures in the Phase 1 Rule. We proposed that once the 1-hour standard is revoked contingency measures for the 1-hour standard will no longer be required (*e.g.*, if the State had not yet submitted them) and contingency measures for the 1-hour standard that had been approved in the SIP may be removed.

2. *Summary of Final Rule.* We are adopting the approach that we proposed, which is that contingency measures under sections 172(c)(9) and 182(c)(9), which are triggered upon a failure to attain the 1-hour standard or to meet reasonable progress milestones for the 1-hour standard, will no longer be required as part of the SIP once the 1-hour NAAQS is revoked. This means that after revocation of the 1-hour standard, an area that has not yet submitted a 1-hour attainment demonstration or a specific 1-hour RFP SIP would no longer be required to submit contingency measures in conjunction with those SIPs. Also, areas with approved section 172 and 182 contingency measures could remove them from their SIP.

3. *Comments and Responses.*

Comment: Several commenters claimed that dropping the requirement for contingency measures for failure to attain or make progress toward attainment of the 1-hour ozone NAAQS is unlawful, arbitrary and capricious and violates the anti-backsliding provisions of section 172(e) by relaxing explicit control requirements for pre-existing 1-hour nonattainment areas. Additionally, several commenters claimed the proposal illegally abrogates subpart 2's contingency measure requirements imposed on such areas "as a matter of law" and renders those requirements "prematurely obsolete" in opposition to the Supreme Court ruling in *Whitman* v. *American Trucking Assoc.*, 531 U.S. 427 (2001).

Response: As noted in response to other comments, section 172(e) does not explicitly apply where EPA has promulgated a more stringent NAAQS. Furthermore, section 172(e) contemplates that there is a cut-off regarding which control obligations should continue after revision of a NAAQS. Where contingency measures have not yet been triggered, we believe it is consistent with Congressional intent to allow areas to remove those measures (or to modify the trigger for such measures to reflect the 8-hour standard). Furthermore, since EPA will no longer make findings of failure to attain or make progress with respect to the 1-hour NAAQS, the obligation to trigger future contingency measures for such 1-hour failures would never occur. With respect to the "as a matter of law" argument and the commenters" reliance on the Supreme Court's ruling in *Whitman,* we refer to our response to comments on this similar issue regarding the section 185 fees.

Comment: Several commenters claimed the proposal violates section 110(l) by interfering with applicable requirements for attainment and RFP and without a showing that such measures are not needed for timely attainment and progress toward attainment.

Response: As we have clarified in the regulatory text, States will need to submit SIP revisions to remove the contingency measures from their SIPs or to revise a trigger that is linked to a violation of the 1-hour NAAQS. In doing so, the State would need to demonstrate that the modification would not interfere with attainment, reasonable progress or any other applicable requirement for purposes of the 8-hour NAAQS. However, since any future contingency measures will never be triggered, EPA does not believe such SIP revisions would interfere with any applicable requirements.

Comment: One commenter contended that because the proposal allows the dropping of 1-hour contingency measures, this may imply that contingency measures that have been implemented could be dropped.

Response: If a State has already implemented a contingency measure, and such measure was considered a "discretionary control measure" after implementation under the Phase 1 Rule (*i.e.*, is not an "applicable requirement"), the State could modify its SIP to remove such measure (as it could for any "discretionary control measure"), but would need to make a demonstration under 110(l) that the modification would not interfere with attainment, reasonable progress or any other applicable requirement for purposes of the 8-hour NAAQS. EPA intends to issue guidance for States to follow to ensure that SIP revisions are consistent with section 110(l).

Comment: Several commenters argued that the proposal is inconsistent with EPA's decision to retain requirements for the 1-hour attainment and rate of progress (ROP) plans and the rationale for that decision ("because the ROP obligation results in control obligations, we believe areas should remain obligated to adopt outstanding ROP obligations to ensure that the ROP milestones are met"). One commenter contended that contingency measures are an integral part of the attainment demonstration and the ROP plan and, therefore, if the States must meet the attainment demonstration and ROP plan obligations, they must also satisfy contingency measure requirements.

Response: As we stated in the preamble to the final Phase 1 Rule, we felt that Congress intended that areas continue to implement mandatory control measures but that Congress' intent with regard to planning SIPs was not as clear (69 FR 23874–75). As a policy matter, we concluded that it made sense to require areas to continue to meet 1-hour ROP obligations because we believed the obligation did not create a significant burden on areas and it made sense that areas that had not met this obligation were not relieved from achieving ROP reductions and thus were treated the same as areas that had fulfilled their statutory obligation. We reached a slightly different result for purposes of outstanding 1-hour attainment demonstrations—providing States with flexibility to adopt alternatives—but relied on the same rationale for retaining the obligation. Additionally, we noted that one of the primary focuses of the anti-backsliding provisions is to keep areas on track for making reductions as they develop SIPs to meet the 8-hour standard. For all of these reasons, we don't believe that areas are obligated to retain the contingency measure obligation. The adoption and implementation of the 1-hour ROP and attainment demonstrations (or an alternative under 51.905(a)(1)(ii)) will ensure that progress is made while areas transition. Once plans are adopted and approved for purposes of the 8-hour standard, including 8-hour contingency measures, those plans by definition will be what is necessary to protect public health and the environment and 1-hour contingency measures that kick in at some future date for the 1-hour standard will not be necessary to achieve that goal (however, contingency measures are required for purposes of the 8-hour standard). Furthermore, this approach is consistent with our goal of shifting our focus to the 8-hour standard and not continuing efforts to monitor

compliance with the pre-existing 1-hour standard.

Comment: One commenter argued that under section 172(e), EPA must enforce controls no less stringent than the 1-hour ozone standard for areas that have never achieved the standard, including section 182(c)(9) contingency measures. The commenter contends that EPA's implementation of the 8-hour standard constitutes a relaxation of the standard because (a) certain areas had higher classifications under the 1-hour standard than they have under the 8-hour standard; and (b) EPA policy allows relaxation of offset ratios, major source definitions and removal of contingency fees. Thus, they contend that EPA must promulgate a set of control measures "no less restrictive than under the old standard."

Response: The commenter raises an issue that is not being reconsidered in this rulemaking. At the time of promulgation of the 8-hour NAAQS and consistently since that time, EPA has taken the position that the 8-hour NAAQS is a more stringent standard. Thus, although not at issue in this rulemaking, we note that the fundamental premise of the comment is inaccurate. The stringency of a standard is determined by looking at the standard itself, which has three components: (1) The averaging time (*i.e.*, 8 hours); (2) level (.08 ppm); and (3) form (the 3-year average of the fourth-high annual reading at a specific monitor). Once a standard is established, areas are required to meet that standard and a determination of whether the standard has been met is based on air quality monitoring data. How a standard is implemented, does not alter the standard in any way although it could have implications for whether areas meet their mandated attainment dates. The EPA's current rulemaking efforts (based on the June 2003 proposal) address how the standard is implemented, and in no way alter the requirement that an area monitor attainment of the standard (as expeditiously as practicable but no later than specific mandated dates) in accordance with the requirements established in the NAAQS rulemaking and thus do not affect the stringency of the standard.

Comment: One commenter recommended that all requirements relating to the 1-hour standard should be retained, including those relating to contingency measures. They point out that section 172(c)(9) requires such measures.

Response: For the reasons provided above, we have concluded that contingency measures related to attainment of the 1-hour NAAQS or achievement of ROP milestones for the 1-hour NAAQS need not be retained. Elsewhere in this rule, we address our decision to no longer require SIPs to contain provisions for the imposition of fees under section 185 for purposes of a failure to attain the 1-hour NAAQS. This rulemaking did not re-open the issue of whether other 1-hour requirements should be retained.

Comment: One commenter urged that the 1-hour standard should not be revoked. They noted that the 1-hour standard is in some cases more protective of public health than the 8-hour standard.

Response: As we noted in the final Phase 1 Rule, we determined in the 1997 NAAQS rulemaking that we did not need to retain the 1-hour standard to protect public health and that the only issue before us in the Phase 1 Rule was the timing for determining when the 1-hour standard should no longer apply (69 FR 23969). Neither issue is being reconsidered in this rulemaking; thus, we will not address this comment here.

Comment: One commenter suggested that we include in proposed § 51.905(e)(2)(iii)—after the reference to section 172(c)(9) of the CAA—a reference also to section 182(c)(9), as we did in the preamble to the proposed rule.

Response: We agree with the commenter and have included that reference in the final regulatory text.

Comment: One commenter noted that an inconsistency exists between § 51.905(e)(1) and proposed § 51.905(e)(2)(iii). Section 51.905(e)(1) requires that the 1-hour contingency measures approved into a SIP remain in force after the 1-hour standard is revoked until the State removes them from the SIP; the commenter believes that the 1-hour contingency measures won't be triggered since the 1-hour standard is revoked. The commenter recommended either to revise § 51.905(e)(1) to conform it with proposed § 51.905(e)(2)(iii) by removing the former provision's preconditions to removal of 1-hour contingency measures; or to clarify the apparent inconsistency between § 51.905(e)(1) and proposed § 51.905(e)(2)(iii).

Response: We agree that the language is inconsistent and that the proposed § 51.905(e)(2)(iii) was poorly drafted. States are required to implement provisions in the approved SIP until such time as the SIP is revised. We are revising § 51.905(e)(2)(iii) to provide that a State is not required to include in its SIP contingency measures that are triggered upon a failure to attain the 1-hour ozone standard. We note that since EPA will no longer be making determinations of whether areas attain the 1-hour standard, contingency measures that have such a trigger would never be triggered, even if they remained in the SIP. Therefore, we have revised § 51.905(e)(2)(iii) to be consistent with § 51.905(e)(ii). Areas must submit SIP revisions to remove contingency measures from their SIPs under this provision.

Comment: One commenter noted that § 51.905(a)(2), addressing 8-hour nonattainment/1-hour maintenance areas, provides that the State may not remove certain 1-hour contingency measures from the maintenance SIP and that this is inconsistent with our proposal that States no longer need contingency measures that are triggered by a finding of failure to attain the 1-hour standard.

Response: We do not believe this language is inconsistent. Section 51.905(a)(2) addresses contingency measures that were part of a 1-hour maintenance plan and here we are addressing contingency measures related to a finding of failure to attain the 1-hour standard or make reasonable further progress toward attainment of the 1-hour standard. As § 51.905(a)(2) recognizes, an area that was maintenance for the 1-hour standard may have moved certain "applicable requirements" to the contingency measures portion of the SIP. This section makes clear that the state is no longer obligated to retain the 1-hour trigger for such measures, but that these requirements must remain a part of the SIP because they are "applicable requirements." Because contingency measures related to failure to attain and failure to make RFP are typically beyond the reductions achieved through applicable requirements, such measures could be removed from the SIP. We note, however, that to the extent a contingency measure is also an "applicable requirement," it cannot be removed from the SIP and we have added a sentence to § 51.905(e)(2)(iii) to clarify that point.

Comment: Sections 51.905(a)(3)(i) and 51.905(a)(4)(i) (addressing 8-hour attainment areas) both provide that the State may not remove obligations from the SIP but may relegate them to contingency measures. Also, § 51.905(b) requires that the § 51.900(f) applicable requirements may be shifted to contingency measures after the 8-hour NAAQS is attained but may not be removed from the SIP. This should be clarified to say that these contingency measures are triggered upon a violation of the 8-hour standard.

Response: The commenter is raising issues outside the context of this proposed rulemaking. We believe that while the regulatory text could perhaps be more explicit, when read in the context of the entire Phase 1 Rule, it is clear that the contingency measures will be linked to the 8-hour standard. We note, however, that areas have flexibility to identify appropriate triggers. Thus, while they may choose a violation of the 8-hour NAAQS as a trigger, a different trigger, such as a certain number of exceedences of the 8-hour NAAQS, may also be appropriate as the trigger and areas are free to choose such triggers.

Comment: One commenter suggested that § 51.905(e)(2)(iii) should be revised to read (with new language in italics): "*Upon revocation of the 1-hour NAAQS for an area*, the State is no longer required to implement contingency measures under section 172(c)(9) *or section 182(c)(9)* of the CAA based on a failure to attain the 1-hour NAAQS or to make reasonable further progress toward attainment of the 1-hour NAAQS."

Response: As provided above, we agree with some of the recommendations made by the commenter and disagree with others. We are revising the language to include the reference to section 182(c)(9). We are also modifying the language to make clear that areas are no longer required to include in their SIP, contingency measures that are triggered by a failure to attain the 1-hour standard or a failure to make RFP and to indicate that control measures that are also applicable requirements may not be removed. These modifications make clear that we are not suggesting that States are not required to implement approved SIPs, but rather that they may revise their SIPs to remove discretionary contingency measures linked to these triggers, if they so choose.

D. Adding Attainment Demonstration to the List of "Applicable Requirements" in § 51.900(f)

1. *Background.* In the Phase 1 Rule, we provided three options for areas that had not met their obligation to have a fully approved 1-hour ozone attainment demonstration SIP. Such areas could submit: (1) A 1-hour attainment demonstration, (2) an early 8-hour attainment demonstration, or (3) a RFP plan providing a 5 percent increment of progress towards the 8-hour NAAQS. While our intent was that an attainment demonstration was an "applicable requirement" for purposes of anti-backsliding in § 51.905, we neglected to specifically include the term "attainment demonstration" when we defined "applicable requirements" in § 51.900(f). Our intent in this rule is to clarify that an attainment demonstration is an "applicable requirement."

2. *Summary of Final Rule.* We are adopting the approach we proposed, which is to add the term "attainment demonstration" to § 51.900(f). The term "attainment demonstration" will be included in § 51.900(f) as "(13) Attainment demonstration or an alternative as provided under § 51.905(a)(ii)."

3. *Comments and Responses.*

Comment: Two commenters opposed EPA's including the attainment demonstration in the list of applicable requirements. One commenter stated that adding attainment demonstration to the list of applicable requirements is redundant because the final rule already requires nonattainment areas to submit attainment demonstrations in § 51.905(a)(1)(ii). The other commenter cross-referenced their comments on the issue of the date for determining which requirements remain applicable requirements once the 1-hour standard is revoked, but did not provide any further explanation.

Response: We agree with the one commenter that it is somewhat redundant to identify "attainment demonstration" in the list of applicable requirements. However, because our rule provides that the obligation to submit an attainment demonstration continues to apply (*i.e.*, remains applicable), we think it is clearer (and removes any possible ambiguity) to include it with the other obligations that continue to apply. In addition, we believe that the change is needed to ensure that the definition of applicable requirement is consistent with the provisions of § 51.905(a) that retain the obligation for the 1-hour attainment demonstration for certain 1-hour ozone nonattainment areas. Regarding the other commenter's opposition based on the same reasons as they described with regard to the date for determining what requirements are applicable requirements, we did not find this argument clear enough for a response. However, to the extent that the commenter's arguments regarding the date for determining what requirements are applicable requirements are relevant to their opposition of listing the attainment demonstration as an applicable requirement, we incorporate our responses to those arguments for responding to this comment.

Comment: Two commenters opposed EPA's including the attainment demonstration in the list of applicable requirements. One commenter stated that adding attainment demonstration to the list of applicable requirements is redundant because the final rule already requires nonattainment areas to submit attainment demonstrations in § 51.905(a)(1)(ii). In opposing the inclusion of the attainment demonstration in the list of applicable requirements, the other commenter referred to reasons they provided regarding the date for determining what requirements are applicable requirements.

Response: We agree with the one commenter that it is somewhat redundant to identify "attainment demonstration" in the list of applicable requirements. However, because our rule provides that the obligation to submit an attainment demonstration continues to apply (*i.e.*, remains applicable), we think it is clearer (and removes any possible ambiguity) to include it with the other obligations that continue to apply. In addition, we believe that the change is needed to ensure that the definition of applicable requirement is consistent with the provisions of § 51.905(a) that retain the obligation for the 1-hour attainment demonstration for certain 1-hour ozone nonattainment areas. Regarding the other commenter's opposition based on the same reasons as they described with regard to the date for determining what requirements are applicable requirements, we did not find this argument clear enough for a response. However, to the extent that the commenter's arguments regarding the date for determining what requirements are applicable requirements are relevant to their opposition of listing the attainment demonstration as an applicable requirement, our responses to those arguments above also apply here.

Comment: One commenter indicated that, while the proposal to add attainment demonstration to the list of applicable requirements would be more consistent with the remainder of the anti-backsliding rule, the commenter recommended that the control strategy that is used to demonstrate attainment of the 1-hour standard also be listed as an applicable requirement.

Response: EPA disagrees. A control strategy is part of the attainment demonstration that EPA would approve into a SIP and therefore does not need to be listed separately in addition to the attainment demonstration. Furthermore, the Phase 1 Rule also provided alternative means of satisfying the attainment demonstration requirement (*i.e.*, an advance increment of progress of 5 percent emission reduction or an early 8-hour ozone attainment demonstration). Thus, EPA believes areas should have the option under the

regulation of submitting these alternatives rather than a control strategy for the 1-hour NAAQS as an applicable requirement. Finally, if we did as the commenter suggested, the effect would be to convert many "discretionary" control measures to applicable requirements. We have never suggested (and do not believe it is required) that State discretion to substitute for non-mandatory control measures should be restricted.

IV. 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 the 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action." The reconsideration put forth today does not substantially change the Phase 1 Rule. With respect to one issue, we are retaining the position we adopted in the Phase 1 Rule. As to the second issue, we are modifying the date in this rule so that it is consistent with our original proposal. Finally, we are promulgating regulatory text to make two clarifications to the final rule. We believe that these provisions do not substantially modify the intent of the final rule but rather merely clarify two issues.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* 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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR part 121.); (2) a 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.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. The Phase 1 Rule interpreted the obligations required of 1-hour ozone nonattainment areas for purposes of anti-backsliding once the 1-hour NAAQS is revoked. This final reconsideration addresses two aspects of the Phase 1 Rule that the Agency was requested to reconsider and clarifies two other aspects of the Phase 1 Rule. Since as noted that final rule, the Phase 1 Rule does not impose requirements on small entities our further action on aspects of that rule also does not impose requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In promulgating the Phase 1 Rule,

we concluded that it was not subject to the requirements of sections 202 and 205 of the UMRA. For those same reasons, our reconsideration and clarification of several aspects of that rule is not subject to the UMRA.

The EPA has determined that this final rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule.

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 final 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. This final reconsideration addresses two aspects of the Phase 1 Rule that the Agency was requested to reconsider and clarifies two other aspects of the Phase 1 Rule. For the same reasons stated in the Phase 1 Rule, Executive Order 13132 does not apply to this proposed rule.

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 final rule does not have "Tribal implications" as specified in Executive Order 13175.

The purpose of this final rule is taking comment on two issues from the Phase 1 Rule that EPA agreed to grant for reconsideration, in addition to two other issues from the Phase 1 Rule. These issues concern the implementation of the 8-hour ozone standard in areas designated nonattainment for that standard. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribes whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

For the same reasons stated in the Phase 1 Rule, this final 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, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this final 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 final rule does nothing to modify that relationship. Because this final rule does not have Tribal implications, Executive Order 13175 does not apply.

While the final rule would have Tribal implications upon a Tribe that is implementing such a plan, it would not impose substantial direct costs upon it nor would it preempt Tribal law.

Although Executive Order 13175 does not apply to this final rule, EPA consulted with Tribal officials in developing this final rule. The EPA has supported a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard.

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 disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule addresses two aspects of the Phase 1 Rule that the Agency was requested to reconsider and clarifies two other aspects of the rule. The final rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions 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.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, *Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard*, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rulemaking does not involve technical standards. Therefore,

EPA is not considering the use of any VCS.

The EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of the implementation plans.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA concluded that the Phase 1 Rule should not raise any environmental justice issues; for the same reasons, this final rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety. The final rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

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 not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 27, 2005.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by July 25, 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 CAA section 307(b)(2).

M. Determination Under Section 307(d)

Pursuant to section 307(d)(1)(U) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(U) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine." While the Administrator did not make this determination earlier, the Administrator believes that all of the procedural requirements, *e.g.*, docketing. hearing and comment periods, of section 307(d) have been complied with during the course of this reconsideration rulemaking.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: May 20, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, 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.

Subpart X—Provisions for Implementation of 8-Hour Ozone National Ambient Air Quality Standard

■ 2. Section 51.900 is amended by revising paragraph (f) introductory text and adding paragraph (f)(13) to read as follows:

§ 51.900 Definitions.

* * * * *

(f) Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

* * * * *

(13) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

* * * * *

■ 3. Section 51.905 is amended by revising paragraph (e)(2)(ii) and by adding paragraph (e)(2)(iii) as follows:

§ 51.905 How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?

* * * * *

(e) * * *

(2) * * *

(ii) Upon revocation of the 1-hour NAAQS for an area, the State is no longer required to include in its SIP provisions for CAA section 181(b)(4) and 185 fees on emissions sources in areas classified as severe or extreme based on a failure to meet the 1-hour attainment date. Upon revocation of the 1-hour NAAQS in an area, the State may remove from the SIP for the area the provisions for complying with the section 185 fee provision as it applies to the 1-hour NAAQS.

(iii) Upon revocation of the 1-hour NAAQS for an area, the State is no longer required to include in its SIP contingency measures under CAA sections 172(c)(9) and 182(c)(9) that would be triggered based on a failure to attain the 1-hour NAAQS or to make reasonable further progress toward attainment of the 1-hour NAAQS. A State may not remove from the SIP a contingency measure that is an applicable requirement.

* * * * *

[FR Doc. 05–10580 Filed 5–25–05; 8:45 am]

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Vol. 70, No. 101

Thursday, May 26, 2005

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FEDERAL REGISTER PAGES AND DATE, MAY

22585–22780 2
22781–23008 3
23009–23774 4
23775–23926 5
23927–24292 6
24293–24476 9
24477–24698 10
24699–24934 11
24935–25456 12
25457–25752 13
25753–28180 16
28181–28414 17
28415–28772 18
28773–29188 19
29189–29436 20
29437–29572 23
29573–29914 24
29915–30328 25
30329–30604 26

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7890 23007
7891 23771
7892 23773
7893 23915
7894 23917
7895 23919
7896 23921
7897 24475
7898 24695
7899 25459
7900 28411
7901 28765
7902 28767
7903 29569
7904 29571
7905 29915

Administrative Orders:
Presidential Determinations:
No. 2005–23 of April 29, 2005 25457

Executive Orders:
12722 (See Notice of May 19, 2005) 29435
12724 (See Notice of May 19, 2005) 29435
12788 (Amended by EO 13378) 28413
13047 (See Notice of May 17, 2005) 28771
13290 (See Notice of May 19, 2005) 28413
13303 (See Notice of May 19, 2005) 29435
13310 (See Notice of May 17, 2005) 28771
13315 (See Notice of May 19, 2005) 29435
13338 (See Notice of May 5, 2005) 24697
13350 (See Notice of May 19, 2005) 29435
13364 (See Notice of May 19, 2005) 29435
13378 28413

Administrative Orders:
Memorandums:
Memorandum of March 11, 2003 (Superceded by Memorandum of May 5, 2005) 28773
Memorandum of April 21, 2005 23925
Memorandum of May 5, 2005 28773
Memorandum of May 13, 2005 29431
Notices:
Notice of May 5, 2005 24697
Notice of May 17, 2005 28771
Notice of May 19, 2005 29435

5 CFR

213 28775
297 28775
315 28775
334 28775
362 28775
530 25732
532 28425
537 28775
550 ..... 24477, 28775
575 25732
1207 24293

Proposed Rules:
532 28488
724 30380
Ch. LXXXI 23065

7 CFR

1 24935
2 23927
3 29573
46 29573
97 28783
110 29573
205 29573
246 29573
278 29573
301 ..... 24297, 30329
319 22585
340 23009
905 23928
927 29388
985 29917
1150 29573
1160 29573
1435 28181
1439 29920
1770 25753
1776 28786
1944 29927

Proposed Rules:
249 30558
319 ..... 22612, 29212
925 30001
944 30001
946 25790
948 23942
983 23065
1005 29410
1007 29410
1430 30009

8 CFR

214 23775

9 CFR

77 29579

78.....22588
417.....30331
Proposed Rules:
94.....23809
327.....24485
410.....29214

10 CFR

72.....22781, 24936, 29931
110.....29934
170.....30526
171.....30526
300.....24302
Proposed Rules:
71.....23303
72.....30015

11 CFR

Proposed Rules:
100.....23068
106.....23072
300.....23072

12 CFR

201.....24303
230.....29582
748.....22764
Proposed Rules:
Ch. 18.....29658
713.....30017
741.....30017

13 CFR

102.....29936
134.....29936

14 CFR

25.....24478, 29937
39.....23783, 23784, 23911, 23930, 24304, 24305, 24307, 24480, 24481, 24699, 24701, 24703, 24936, 24937, 28181, 28184, 28186, 28187, 28188, 28415, 28417, 28419, 28420, 28791, 28793, 28795, 28797, 28800, 28803, 28806, 29437, 29440, 29442, 29940
61.....25761
63.....25761
65.....25761
71.....22590, 23002, 23786, 23787, 23788, 23789, 23790, 23934, 23935, 24677, 24939, 24940, 28423, 29941, 29942, 29943, 29944
73.....29946
93.....29062
97.....22781, 23002, 25764
121.....23935
129.....23935
150.....29066
201.....25765
203.....25765
205.....25765
215.....25765
298.....25765
380.....25765
385.....25765
389.....25765
1260.....28808
1273.....28808
1274.....28808
Proposed Rules:
25.....30020
39.....22613, 22615, 22618, 22620, 22826, 24326, 24331, 24335, 24338, 24341, 24488, 24731, 24994, 24997, 28220, 28489, 28491, 28854, 28857, 28988, 30028
71.....23810, 30031, 30033, 30034, 30035, 30036
401.....29164
404.....29164
413.....29164
415.....29164
420.....29164

15 CFR

30.....25773
335.....24941, 25774
340.....24941, 25774
Proposed Rules:
738.....29660
742.....29660
801.....23811
960.....29380

16 CFR

Proposed Rules:
316.....25426

17 CFR

1.....28190
150.....24705
450.....29445

18 CFR

284.....28204
Proposed Rules:
35.....23945, 28221, 28222
37.....28222
38.....28222
131.....23945, 28221
154.....23945, 28221
157.....23945, 28221
250.....23945, 28221
281.....23945, 28221
284.....23945, 28221
300.....23945, 28221
341.....23945, 28221
344.....23945, 28221
346.....23945, 28221
347.....23945, 28221
348.....23945, 28221
375.....23945, 28221
385.....23945, 28221

19 CFR

122.....22782, 22783

20 CFR

404.....28809
1001.....28402

21 CFR

1.....25461
520.....29447
1271.....29949
1300.....22591, 25462
1301.....22591, 25462
1304.....22591, 25462
1305.....22591
1307.....22591, 25462
Proposed Rules:
1.....24490
101.....23813, 25496
130.....29214
361.....24491
1308.....25502

22 CFR

62.....28815
203.....25466

23 CFR

771.....24468

24 CFR

Proposed Rules:
115.....28748
207.....24272

25 CFR

542.....23011
Proposed Rules:
61.....28859

26 CFR

1.....23790, 28211, 28702, 28818, 29447, 29450, 29596, 30334
31.....28211
301.....28702, 29452
602.....28702, 29450, 30334
Proposed Rules:
1.....24999, 28230, 28743, 29460, 29662, 29663, 29671, 29675, 29868, 30036, 30380
31.....28231
301.....24999, 28743

27 CFR

Proposed Rules:
9.....25000, 28861, 28865, 28870, 28873

28 CFR

75.....29607
501.....29189
549.....29191, 29194
571.....29195

29 CFR

1952.....24947
2200.....22785, 25652
2204.....22785
4022.....25470
4044.....25470
Proposed Rules:
1910.....22828

30 CFR

913.....28820
915.....22792
917.....22795
938.....25472

31 CFR

10.....28824
285.....22797
356.....29454

32 CFR

701.....25492

33 CFR

100.....23936, 25778, 25780, 29195, 29197
110.....28424, 29953
117.....24482, 25781, 25783, 28426, 29622
150.....24707
165.....22800, 24309, 24955, 28426, 28428, 28826, 29200, 29202, 29623, 29624, 30358, 30360
402.....28212
Proposed Rules:
100.....23821, 23946
117.....24492
165.....23821, 23824, 23948, 23950, 24342, 24344, 25505, 25507, 25509, 25511, 25514, 29235, 30040
207.....30042

36 CFR

1253.....22800
294.....25654
Proposed Rules:
1195.....30381

37 CFR

1.....30360
201.....30366
270.....24309

37 CFR

Proposed Rules:
258.....28231

38 CFR

3.....23027
17.....22595, 29626
21.....25785
36.....22596
Proposed Rules:
5.....24680

39 CFR

111.....29958
254.....28213

40 CFR

35.....29627
51.....25162, 30592
52.....22597, 22599, 22603, 23029, 24310, 24959, 24970, 24979, 29487, 24991, 25688, 25719, 28215, 28429, 28826, 28988, 29202, 30367, 30370, 30373, 30376, 30377, 30378
60.....28436
63.....25666, 25676, 28360, 29400
70.....22599, 22603
72.....25162, 28606
73.....25162
74.....25162
75.....28606
77.....25162
78.....25162
80.....28606
81.....22801, 22803
93.....24280
96.....25162
180.....24709, 28436, 28443, 28447, 28452, 28455
262.....29910
282.....29628
300.....22606, 24314
Proposed Rules:
51.....25408
52.....22623, 23075, 24347, 24348, 24734, 25000, 25004, 25008, 25516, 25794, 28233, 28239, 28252, 28256, 28260, 28264, 28267, 28495, 28878, 29238, 29239, 29243, 29461, 29466, 30382, 30389, 30396,

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 26, 2005

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Pine shoot beetle; published 5-26-05

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; published 5-26-05

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgages and loan insurance programs:
Single family mortgage insurance—
Civil monetary penalties; treble damages for failure to engage in loss migration; published 4-26-05

TRANSPORTATION DEPARTMENT
Real ID Act:
Minimum Standards for Driver's Licenses and Personal Identification Cards Negotiated Rulemaking Advisory Committee; terminated; published 5-26-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; published 4-21-05

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Section 752 assumption of partner liabilities; published 5-26-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Nectarines and peaches grown in—
California; comments due by 5-31-05; published 3-31-05 [FR 05-06418]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Fruits and vegetables importation; list; comments due by 5-31-05; published 3-31-05 [FR 05-06269]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Scallop; comments due by 5-31-05; published 4-13-05 [FR 05-07448]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction; comments due by 6-3-05; published 5-4-05 [FR 05-08695]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]
Contractors' safety standards for explosives and ammunition; revision; comments due by 5-31-05; published 3-29-05 [FR 05-05429]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Ethylene manufacturing process units; heat exchange systems and waste operations; comments due by 5-31-05; published 4-13-05 [FR 05-07404]
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 6-1-05; published 5-2-05 [FR 05-08708]
Missouri; comments due by 6-1-05; published 5-2-05 [FR 05-08703]
New Mexico; comments due by 6-3-05; published 5-4-05 [FR 05-08867]
Pennsylvania; comments due by 5-31-05; published 4-29-05 [FR 05-08609]
Virginia; comments due by 5-31-05; published 4-29-05 [FR 05-08605]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-1-05; published 5-2-05 [FR 05-08601]
National priorities list update; comments due by 6-1-05; published 5-2-05 [FR 05-08602]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]
Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Radio stations; table of assignments:
Oklahoma; comments due by 5-31-05; published 4-27-05 [FR 05-08212]

Calistoga, Napa County, CA; comments due by 5-31-05; published 3-31-05 [FR 05-06350]

Dos Rios, Mendocino County, CA; comments due by 5-31-05; published 3-31-05 [FR 05-06351]

Ramona Valley, San Diego County, CA; comments due by 5-31-05; published 3-31-05 [FR 05-06352]

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H.R. 1268/P.L. 109–13
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (May 11, 2005; 119 Stat. 231)
Last List May 9, 2005

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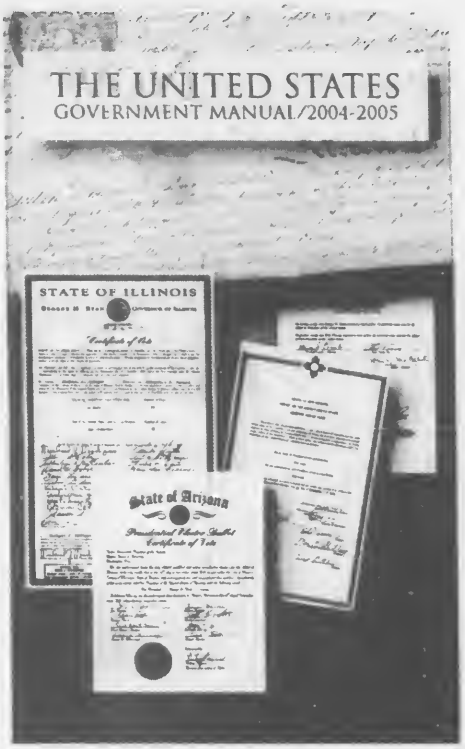

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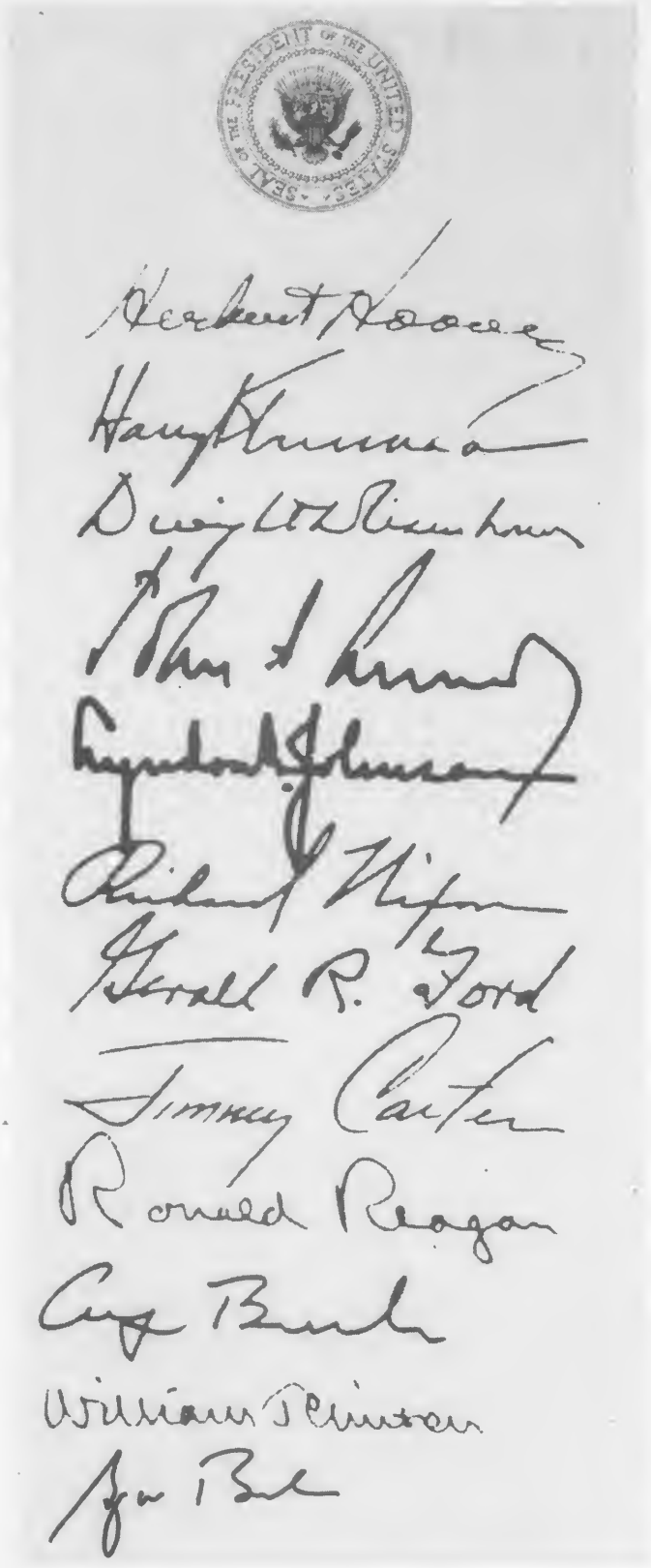

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